



**MOTOR VEHICLE
FUEL TAX LAW
OPERATIVE ON OR AFTER
JANUARY 1, 2002**

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FEDERAL LAWS RELATING TO STATE TAXATION

PROVISIONS RELATING TO MOTOR VEHICLE FUEL TAXES IN FEDERAL AREAS

(4 U.S.C.A., Section 104; 61 Stat. (1947) 644, as amended by 70 Stat. (1956) 799.)

§ 104. Tax on motor fuel sold on military or other reservation; reports to state taxing authority. (a) All taxes levied by any State, Territory, or the District of Columbia upon, with respect to, or measured by, sales, purchases, storage, or use of gasoline or other motor vehicle fuels, may be levied in the same manner and to the same extent, with respect to such fuels when sold by or through post exchanges, ship stores, ship service stores, commissaries, filling stations, licensed traders, and other similar agencies located on United States military or other reservations, when such fuels are not for the exclusive use of the United States. Such taxes, so levied, shall be paid to the proper taxing authorities of the State, Territory, or the District of Columbia, within whose borders the reservation affected may be located.

(b) The officer in charge of such reservation shall, on or before the fifteenth day of each month, submit a written statement to the proper taxing authorities of the State, Territory, or the District of Columbia within whose borders the reservation is located, showing the amount of such motor fuel with respect to which taxes are payable under subsection (a) for the preceding month.

(c) As used in this section, the term “Territory” shall include Guam.

CALIFORNIA CONSTITUTIONAL PROVISIONS

ARTICLE XIX

MOTOR VEHICLE TAXATION AND REVENUES

- § 1. Use of fuel taxes.
- § 2. Use of motor vehicle fees and taxes.
- § 3. Appropriations by the Legislature—regulation of expenditures, etc.
- § 4. Authorization and approval for expenditures.
- § 5. Expenditures for payment of bonds.
- § 6. Loans to State General Fund.
- § 7. Scope of article.
- § 8. Use of fuel taxes—local surplus property.
- § 9. Transfer of surplus state property located in coastal zone.

SEC. 1. Use of fuel taxes. Revenues from taxes imposed by the state on motor vehicle fuels for use in motor vehicles upon public streets and highways, over and above the costs of collection and any refunds authorized by law, shall be used for the following purposes:

(a) The research, planning, construction, improvement, maintenance, and operation of public streets and highways (and their related public facilities for nonmotorized traffic), including the mitigation of their environmental effects, the payment for property taken or damaged for such purposes, and the administrative costs necessarily incurred in the foregoing purposes.

(b) The research, planning, construction, and improvement of exclusive public mass transit guideways (and their related fixed facilities), including the mitigation of their environmental effects, the payment for property taken or damaged for such purposes, the administrative costs necessarily incurred in the foregoing purposes, and the maintenance of the structures and the immediate right-of-way for the public mass transit guideways, but excluding the maintenance and operating costs for mass transit power systems and mass transit passenger facilities, vehicles, equipment, and services.

History.—Section 1 was adopted and former Section 1 was repealed June 4, 1974.

SEC. 2. Use of motor vehicle fees and taxes. Revenues from fees and taxes imposed by the state upon vehicles or their use or operation, over and above the costs of collection and any refunds authorized by law, shall be used for the following purposes:

(a) The state administration and enforcement of laws regulating the use, operation, or registration of vehicles used upon the public streets and highways of this state, including the enforcement of traffic and vehicle laws by state agencies and the mitigation of the environmental effects of motor vehicle operation due to air and sound emissions.

(b) The purposes specified in Section 1 of this article.

History.—Section 2 was adopted and former Section 2 was repealed June 4, 1974.

SEC. 3. Appropriations by the Legislature—regulation of expenditures, etc. The Legislature shall provide for the allocation of the revenues to be used for the purposes specified in Section 1 of this article in a manner which ensures the continuance of existing statutory allocation

formulas for cities, counties, and areas of the state, until it determines that another basis for an equitable, geographical, and jurisdictional distribution exists; provided that, until such determination is made, any use of such revenues for purposes specified in subdivision (b) of Section 1 of this article by or in a city, county, or area of the state shall be included within the existing statutory allocations to, or for expenditure in, that city, county, or area. Any future statutory revisions shall provide for the allocation of these revenues, together with other similar revenues, in a manner which gives equal consideration to the transportation needs of all areas of the state and all segments of the population consistent with the orderly achievement of the adopted local, regional, and statewide goals for ground transportation in local general plans, regional transportation plans, and the California Transportation Plan.

History.—Section 3 was adopted and former Section 3 was repealed June 4, 1974.

SEC. 4. Authorization and approval for expenditures. Revenues allocated pursuant to Section 3 may not be expended for the purposes specified in subdivision (b) of Section 1, except for research and planning, until such use is approved by a majority of the votes cast on the proposition authorizing such use of such revenues in an election held throughout the county or counties, or a specified area of a county or counties, within which the revenues are to be expended. The Legislature may authorize the revenues approved for allocation or expenditure under this section to be pledged or used for the payment of principal and interest on voter-approved bonds issued for the purposes specified in subdivision (b) of Section 1.

History.—Section 4 was adopted and former Section 4 was repealed June 4, 1974.

SEC. 5. Expenditures for payment of bonds. The Legislature may authorize up to 25 percent of the revenues available for expenditure by any city or county, or by the state, for the purposes specified in subdivision (a) of Section 1 of this article to be pledged or used for the payment of principal and interest on voter-approved bonds issued for such purposes.

History.—Section 5 was adopted June 4, 1974.

SEC. 6. Loans to State General Fund. This article shall not prevent the designated tax revenues from being temporarily loaned to the State General Fund upon condition that amounts loaned be repaid to the funds from which they were borrowed.

History.—Section 6 was adopted June 4, 1974.

SEC. 7. Scope of article. This article shall not affect or apply to fees or taxes imposed pursuant to the Sales and Use Tax Law or the Vehicle License Fee Law, and all amendments and additions now or hereafter made to such statutes.

History.—Section 7 was adopted June 4, 1974.

SEC. 8. Use of fuel taxes—local surplus property. Notwithstanding Sections 1 and 2 of this article, any real property acquired by the expenditure of the designated tax revenues by an entity other than the State for the

purposes authorized in those sections, but no longer required for such purposes, may be used for local public park and recreational purposes.

History.—Section 8 was adopted June 8, 1976.

SEC. 9. Transfer of surplus state property located in coastal zone. Notwithstanding any other provision of this Constitution, the Legislature, by statute, with respect to surplus state property acquired by the expenditure of tax revenues designated in Sections 1 and 2 and located in the coastal zone, may authorize the transfer of such property, for a consideration at least equal to the acquisition cost paid by the state to acquire the property, to the Department of Parks and Recreation for state park purposes, or to the Department of Fish and Game for the protection and preservation of fish and wildlife habitat, or to the Wildlife Conservation Board for purposes of the Wildlife Conservation Law of 1947, or to the State Coastal Conservancy for the preservation of agricultural lands.

As used in this section, “coastal zone” means “coastal zone” as defined by Section 30103 of the Public Resources Code as such zone is described on January 1, 1977.

History.—Section 9 was adopted November 7, 1978.

ANALYSIS OF MOTOR VEHICLE FUEL TAX LAW

Nature and Rate of Tax. The tax is imposed on the removal of motor vehicle fuel in this state from a terminal if the motor vehicle fuel is removed at the rack. (Sec. 7360, 7362.) The tax is also imposed on the removal of motor vehicle fuel in this state from any refinery, and the entry of motor vehicle fuel into this state for sale, consumption, use, or warehousing as specified. (Sec. 7360, 7363.)

DEFINITIONS

1. Motor Vehicle. “Motor vehicle” includes every self-propelled vehicle operated or suitable for operation on the highway, except a vehicle used exclusively upon stationary rails or tracks. (Sec. 7325.)

2. Highway. “Highway” includes a way or place, of whatever nature, publicly maintained and open to the use of the public for purposes of vehicular travel. (Sec. 7319.)

3. Motor Vehicle Fuel. “Motor vehicle fuel” means gasoline and aviation gasoline. It does not include jet fuel, diesel fuel, kerosene, liquefied petroleum gas, natural gas in liquid or gaseous form, or alcohol. (Sec. 7326.)

4. Removal. “Removal” means any physical transfer of motor vehicle fuel, and any use of motor vehicle fuel other than as a material in the production of motor vehicle fuel. However, motor vehicle fuel is not removed when it evaporates or is otherwise lost or destroyed. (Sec. 7336.)

5. Rack. “Rack” means a mechanism for delivering motor vehicle fuel from a refinery or terminal into a truck, trailer, railroad car, or other means of nonbulk transfer. (Sec. 7333.)

6. Supplier. “Supplier” includes any person who is any of the following: (a) Blender, as defined in Section 7308. (b) Enterer, as defined in Section 7311. (c) Position holder, as defined in Section 7332. (d) Refiner, as defined in Section 7334. (e) Terminal operator, as defined in Section 7340. (f) Throughputter, as defined in Section 7341. (Sec. 7338.)

7. Terminal. “Terminal” means a motor vehicle fuel storage and distribution facility that is supplied by pipeline or vessel, and from which motor vehicle fuel may be removed at a rack. (Sec. 7339.)

Exemptions. Tax does not apply to:

- Any entry or removal from a terminal or refinery of motor vehicle fuel transferred in bulk to a refinery or terminal if the persons involved (including the terminal operator) are licensed suppliers.
- The removal of motor vehicle fuel, if (i) it is removed by railroad car from an approved refinery and is received at an approved terminal, and (ii) the refinery and the terminal are operated by the same licensed supplier, and (iii) the refinery is not served by pipeline (other than a pipeline for the receipt of crude oil) or vessel.

- Motor vehicle fuel which, pursuant to the contract of sale, is required to be shipped and is shipped to a point outside of this state by a supplier by means of (i) facilities operated by the supplier, or (ii) delivery by the supplier to a carrier, customs broker, or forwarding agency, whether hired by the purchaser or not, for shipment to the out-of-state point.
- Delivery by the supplier to any vessel clearing from a port of this state for a port outside of this state and actually exported from this state in the vessel.
- Motor vehicle fuel sold by credit card certified by the United States Department of State to any consulate officer or consulate employee of a foreign government who is not engaged in any private occupation for gain within this state, who uses the motor vehicle fuel in a motor vehicle that is registered with the United States Department of State, and whose government has done either (i) entered into a treaty with the United States providing for the exemption of its representatives from national, state, and municipal taxes or (ii) Granted a similar exemption to representatives of the United States.
- Motor vehicle fuel sold to the United States armed forces for use in ships or aircraft, or for use outside this state.
- Removal or entry of gasoline blendstocks in one of the several ways specified in the law.
- Motor vehicle fuel sold by a supplier to a train operator for use in a motor vehicle fuel-powered train or for other off-highway use and the supplier has on hand an exemption certificate from the train operator.

LICENSES AND BONDS

License Requirement. A person desiring to engage in business as a supplier, industrial user, pipeline operator or vessel operator must obtain a license and post the required bond. (Secs. 7451, 7460, 7470.)

Payments by Unlicensed Persons. If any person becomes a supplier without first securing a license, the tax and applicable interest and penalties become immediately due and payable on account of all motor vehicle fuel removed, sold, or entered by the supplier. The Board shall ascertain the amount of motor vehicle fuel removed, sold, or entered, shall determine the amount of tax due and add a penalty of 25 percent. The penalty may be waived if the Board determines that failure to obtain the license was due to reasonable cause. A copy of the determination shall be filed with the Controller who shall forthwith collect the tax, interest, and penalty. (Secs. 7726-7732.)

Lien of Tax. The tax together with all interest, penalties, and costs is a lien on all personal property and attaches at the time motor vehicle fuel is removed, sold, or entered. If the amount is not paid when due, the Controller may file a certificate of amount of tax, interest, and penalties with the recorder of any county, and the amount constitutes a lien upon all real

property in the county then owned or thereafter acquired by the debtor. The Controller may release all or any portion of the property subject to the lien. (Sec. 7872.)

Records. Every highway vehicle operator/fueler, industrial user, pipeline operator, supplier, train operator, vessel operator, and every person dealing in, removing, transporting, or storing motor vehicle fuel in this state must maintain full and accurate records as the Board requires, and make those records available for inspection. (Secs. 8301–8304.)

Deposit of Taxes. The Controller shall transmit all payments to the State Treasurer who shall deposit them in the Motor Vehicle Fuel Account in the Transportation Tax Fund. (Sec. 8351.)

Returns and Payment. Each supplier must file a return with the Board for each calendar month. The returns are due on or before the last day of the month following the monthly period to which they relate and must be accompanied by a remittance, payable for the Controller of the amount of tax due. (Sec. 7651.) Terminal operators, pipeline operators and vessel operators must file reports containing specified information with the Board for each calendar month or other period set by the Board. The reports are due on or before the last day of the month following the monthly period to which they relate. (Sec. 7652.5, 7652.7.)

If a return is not filed or payment made within the time required, a penalty of 10 percent of the amount of tax is imposed and interest accrues from the due date until paid. (Sec. 7655.) An extension of time for filing or payment will be granted upon request and a showing of good cause. The granting of the request does not prevent the accrual of interest. (Sec. 7656.)

If a supplier's estimated tax liability averages \$900,000 or more per month, the supplier shall make prepayments. The prepayments are credited against the taxes due for the monthly period for which the prepayments are made. Failure to make a prepayment will result in a 6 percent penalty. The penalty is 10 percent if failure to pay is due to negligence or intentional disregard. (Secs. 7659–7659.8.)

Refunds on Certain Sales. (Sec. 8101.) Persons who have paid the tax on motor vehicle fuel either directly or indirectly to the vendor from whom it was purchased may file a claim for refund with the Controller for the tax with respect to fuel used for other than operating motor vehicles upon the highway. Refund of tax also will be made if:

1. The fuel is purchased and used for purposes other than operating motor vehicles upon the public highways of the state.
2. The fuel is exported for use outside the state.
3. The fuel is sold to the armed forces of the United States for use in ships or aircraft or for use outside the state.
4. The fuel is used in certain construction equipment.
5. The fuel is used by certain consulate officers or employees of foreign governments.

6. The fuel is removed at a rack and tax is paid on that removal, or the fuel is purchased tax-paid outside the bulk transfer/terminal system and then delivered to another approved terminal from which the tax paid fuel is subsequently removed.

7. The fuel is purchased tax-paid in the bulk transfer/terminal system and subsequently removed at the terminal rack. This applies only to those purchases made on or after January 1, 2002.

8. The fuel is used in an operation of a motor vehicle on highways under the jurisdiction of the United States Department of Agriculture when the user pays or contributes to the cost or construction or maintenance of the highway.

9. The fuel is used in propelling passenger carrying vehicles for public transit purposes (this refund is limited to 6¢ per gallon).

10. The fuel is used in operating a vessel on water located on private property owned or controlled by the operator of the vessel. (Secs. 8101-8101.7.)

Claims for refund mentioned above shall be filed within 3 years from the date of the purchase of the motor vehicle fuel. (Sec. 8105.)

No refund shall be granted for losses in handling, transporting, or storing motor vehicle fuel. (Sec. 8107.)

Aircraft Jet Fuel Tax

Nature and Rate of Tax. The tax is imposed for the privilege of using or selling aircraft jet fuel. The tax is imposed on every aircraft jet fuel dealer and is at the rate of 2 cents per gallon of fuel sold to an aircraft jet fuel user or used by an aircraft jet fuel dealer. (Sec. 7392.)

DEFINITIONS

Aircraft Jet Fuel. “Aircraft jet fuel” is any inflammable liquid used to propel an aircraft operated by a jet or turbine type engine. (Sec. 7387.)

Aircraft Jet Fuel Dealer. An aircraft jet fuel dealer is a person who sells to an aircraft jet fuel user aircraft jet fuel delivered into the fuel tanks of an aircraft or into storage from which the fuel is withdrawn for use in an aircraft. (Sec. 7388.)

Aircraft Jet Fuel User. An aircraft jet fuel user is a person who uses aircraft jet fuel to propel an aircraft in this state except:

1. A certificated common carrier by air.
2. Certain manufacturers or repairers of aircraft.
3. The armed forces of the United States. (Sec. 7389.)

Dealer’s Permit. Each person desiring to become an aircraft jet fuel dealer must obtain a permit from the Board and post the required bond. (Sec. 7395.) The permit is valid until canceled, suspended, or revoked. (Sec. 7396.)

Administration. The administrative provisions relating to motor vehicle fuel apply to aircraft jet fuel tax. (Sec. 7397.)

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MOTOR VEHICLE FUEL TAX LAW

Deposit of taxes. The proceeds of this tax are deposited in the Motor Vehicle Fuel Account in the Transportation Tax Fund and after payment of refunds, the balance is transferred to the Aeronautics Account in the State Transportation Fund. (Sec. 7398.)

MOTOR VEHICLE FUEL TAX LAW**(Part 2, Division 2, Revenue and Taxation Code *)**

Enacted Statutes 1941, Chapter 37; amended Statutes 1941, Chapters 836, 843, 981, 1037; Statutes 1943, Chapters 459, 460, 874; Statutes 1945, Chapters 343, 531, 1025; Statutes 1947, Chapters 861, 960, 1564; Statutes First Extra Session 1947, Chapters 11, 15; Statutes 1948, Chapter 36; Statutes 1949, Chapters 401, 711, 725, 1408, 1465; Statutes 1951, Chapters 780, 1279, 1460; Statutes 1953, Chapters 1198, 1200, 1601, 1865; Statutes 1954, Chapter 10; Statutes 1955, Chapters 4, 1059, 1870; Statutes 1957, Chapters 155, 701, 1051; Statutes 1959, Chapters 6, 508, 822, 1859, 1968; Statutes 1961, Chapters 232, 233, 448, 712, 1239, 1270, 2127; Statutes 1963, Chapters 269, 438, 558, 780, 1325, 1357, 1523, 1527, 1852, 2102; Statutes 1965, Chapters 27, 371, 396, 671, 679, 690, 1920, 2028, 2029; Statutes (First Extra Session) 1966, Chapter 61; Statutes 1967, Chapters 881, 1134, 1480, 1682; Statutes 1968, Chapters 432, 631, 1217, 1222, 1256, 1299; Statutes 1969, Chapters 29, 52, 131, 138, 368, 561, 1587; Statutes 1970, Chapters 555, 1509, 1571; Statutes 1971, Chapters 241, 243, 1400, 1634; Statutes 1972, Chapters 103, 481, 1158, 1273, 1382, 1405, 1408; Statutes 1973, Chapters 700, 1153, 1195; Statutes 1974, Chapters 532, 610, 1134, 1250, 1516; Statutes 1975, Chapters 508, 661, 972, 1050; Statutes 1977, Chapters 329, 352, 481, 921; Statutes 1978, Chapters 817, 827, 1140; Statutes 1979, Chapters 322, 373; Statutes 1980, Chapters 228, 600; Statutes 1981, Chapters 541, 714, 947; Statutes 1982, Chapters 5 (First Extra Session), 517, 681, 762, 1500, and 1589; Statutes 1983, Chapters 46, 323, and 1102.

- Chapter 1. General Provisions and Definitions. §§ 7301-7345.
- 2. Imposition of Tax. §§ 7360-7373.
- 2.5. Aircraft Jet Fuel Tax. §§ 7385-7398.
- 3. Exemptions. §§ 7401-7405.
- 4. Licenses and Bonds. §§ 7451-7511.
- 5. Determinations and Payments. §§ 7651-7732.
- 6. Collection of Tax. §§ 7851-7982.
- 7. Overpayments and Refunds. §§ 8101-8191.
- 8. Administration. §§ 8251-8277.
- 9. Records. §§ 8301-8304.
- 10. Distribution of Proceeds. §§ 8351-8360.
- 11. Violations. §§ 8401-8406.
- 12. Metropolitan Transportation Commission. §§ 8500-8526.

CHAPTER 1. GENERAL PROVISIONS AND DEFINITIONS **

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- § 7321. "In this state."
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- § 7325. "Motor vehicle."
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* The provisions of this part, except as otherwise noted, became effective July 1, 1943.

** Added by Stats. 2000, Ch. 1053 (AB 2114), operative January 1, 2002.

- § 7327. “Motor vehicle fuel-powered highway vehicle.”
- § 7328. “Motor vehicle fuel-powered train.”
- § 7329. “Person.”
- § 7330. “Pipeline.”
- § 7331. “Pipeline operator.”
- § 7332. “Position holder.”
- § 7333. “Rack.”
- § 7334. “Refiner.”
- § 7335. “Refinery.”
- § 7336. “Removal.”
- § 7337. “Sale.”
- § 7338. “Supplier.”
- § 7339. “Terminal.”
- § 7340. “Terminal operator.”
- § 7341. “Throughputter.”
- § 7342. “Train operator.”
- § 7343. “Vessel.”
- § 7344. “Vessel operator.”
- § 7345. “Tax-paid fuel.”

7301. **Title.** This part is known and may be cited as the “Motor Vehicle Fuel Tax Law.”

7302. **Construction.** Except where the context otherwise requires, the definitions given in this chapter govern the construction of this part.

7303. **“Aircraft.”** “Aircraft” means any powered contrivance designed for navigation in the air except a rocket or missile.

7304. **“Alcohol.”** “Alcohol” includes ethanol and methanol.

7305. **“Approved terminal or refinery.”** “Approved terminal or refinery” means a terminal or refinery that is operated by a licensed supplier.

7306. **“Aviation gasoline.”** “Aviation gasoline” means all special grades of gasoline that are suitable for use in aviation reciprocating engines.

7307. **“Blended motor vehicle fuel.”** “Blended motor vehicle fuel” means any mixture of motor vehicle fuel with respect to which tax has been imposed and any other liquid on which tax has not been imposed. Blended motor vehicle fuel also means any conversion of a liquid into motor vehicle fuel. “Conversion of a liquid into motor vehicle fuel” occurs when any liquid that is not included in the definition of motor vehicle fuel and that is outside the bulk transfer/terminal system is sold as motor vehicle fuel, delivered as motor vehicle fuel, or represented to be motor vehicle fuel.

7308. **“Blender.”** “Blender” includes any person that produces or converts blended motor vehicle fuel outside the bulk transfer/terminal system.

7309. **“Bulk transfer.”** “Bulk transfer” means any transfer of motor vehicle fuel by pipeline or vessel.

7310. **“Bulk transfer/terminal system.”** “Bulk transfer/terminal system” means the motor vehicle fuel distribution system consisting of refineries, pipelines, vessels, and terminals. Motor vehicle fuel in a refinery,

pipeline, vessel, or terminal is in the bulk transfer/terminal system. Motor vehicle fuel in the fuel tank of any engine, or in any railcar, trailer, truck, or other equipment suitable for ground transportation is not in the bulk transfer/terminal system.

7311. **“Enterer.”** “Enterer” includes any person who is the importer of record (under federal customs law) with respect to motor vehicle fuel. If the importer of record is acting as an agent, the person for whom the agent is acting is the enterer. If there is no importer of record of motor vehicle fuel entered into this state, the owner of the motor vehicle fuel at the time it is brought into this state is the enterer.

7312. **“Entry.”** “Entry” means the importing of motor vehicle fuel into this state. However, motor vehicle fuel brought into this state in the fuel tank of a motor vehicle or aircraft shall not be deemed to be an “entry” if not removed from the fuel tank except as used for the operation of that motor vehicle or aircraft, except to the extent that the motor vehicle fuel was acquired tax free for export or a refund of tax was claimed as a result of exportation from the state from which that motor vehicle fuel was transported into this state.

7313. **“Finished gasoline.”** “Finished gasoline” means all products (including gasohol) that are commonly known or sold as gasoline.

7314. **“Fuel tank.”** “Fuel tank” means any receptacle on a motor vehicle from which fuel is supplied for the operation of a motor vehicle.

7315. **“Gallon.”** “Gallon” means the United States gallon of 231 cubic inches or the volumetric gallon adjusted to 60 degrees Fahrenheit when the invoice and settlement is made on the temperature corrected gallonage.

7316. **“Gasoline.”** “Gasoline” means finished gasoline and gasoline blendstocks.

7317. **“Gasoline blendstocks.”** “Gasoline blendstocks” means any petroleum product component of gasoline.

7318. **“Gasohol.”** “Gasohol” means all blends of gasoline, and alcohol containing more than 15 percent gasoline.

7319. **“Highway.”** “Highway” includes a way or place, of whatever nature, publicly maintained and open to the use of the public for purposes of vehicular travel.

7320. **“Highway vehicle operator/fueler.”** “Highway vehicle operator/fueler” includes:

(a) Any person that owns, operates, or otherwise controls a motor vehicle fuel-powered highway vehicle and delivers, or causes to be delivered, motor vehicle fuel or any liquid into the fuel tank of a motor vehicle fuel-powered highway vehicle; or

(b) Any person who sells motor vehicle fuel on which a claim for refund has been allowed, or who sells and delivers or causes to be delivered into the fuel tank of a motor vehicle fuel-powered highway vehicle any liquid on which tax has not been imposed.

History.—Stats. 2001, Ch. 429 (AB 309), operative January 1, 2002, substituted “Any” for “any” before “person that owns”, substituted “delivers” for “places” after “highway vehicle”, and substituted “delivered” for “placed” after “causes to be” in subdivision (a); and substituted “Any” for “any” before “person who sells”, added “who sells and delivers or causes to be delivered into the fuel tank of a motor vehicle fuel-powered highway vehicle” after “allowed, or” in subdivision (b).

7321. **“In this state.”** “In this state” or “in the state” means within the exterior limits of the State of California and includes all territory within these limits owned by or ceded to the United States of America.

7322. **“Industrial user.”** “Industrial user” means any person that receives gasoline blendstocks by bulk transfer for its own use in the manufacture of any product other than finished gasoline.

7323. **“Licensed industrial user.”** “Licensed industrial user” means any industrial user that is licensed pursuant to Section 7460.

7324. **“Licensed supplier.”** “Licensed supplier” includes any enterer, position holder, refiner, terminal operator, or throughputter that is licensed as a supplier pursuant to Section 7451.

7325. **“Motor vehicle.”** “Motor vehicle” includes every self-propelled vehicle operated or suitable for operation on the highway, except a vehicle used exclusively upon stationary rails or tracks.

7326. **“Motor vehicle fuel.”** “Motor vehicle fuel” means gasoline and aviation gasoline. It does not include jet fuel, diesel fuel, kerosene, liquefied petroleum gas, natural gas in liquid or gaseous form, alcohol, or racing fuel.

History.—Stats. 2001, Ch. 429 (AB 309), operative January 1, 2002, substituted “means” for “includes” after ““Motor vehicle fuel””, added “and” after “means gasoline”, and deleted “, and any inflammable liquid, by whatever name the liquid may be known or sold, which is used or is usable in an explosion type of engine” after “aviation gasoline” in the first sentence, and added “jet fuel,” after “It does not include” in the second sentence. Stats. 2003, Ch. 605 (SB 1060), effective January 1, 2004, substituted “alcohol, or racing fuel” for “or alcohol” after “liquid or gaseous form,” in the second sentence.

7327. **“Motor vehicle fuel-powered highway vehicle.”** “Motor vehicle fuel-powered highway vehicle” means a motor vehicle that is operated by a motor vehicle fuel-powered engine on a highway.

7328. **“Motor vehicle fuel-powered train.”** “Motor vehicle fuel-powered train” means any motor vehicle fuel-powered equipment or machinery that rides on rails, including equipment or machinery that transports passengers, freight, or a combination of both passengers and freight, and equipment or machinery that only carries freight or passengers of the operator thereof. Thus, the term includes a locomotive, work train, switching engine, and track maintenance machine.

7329. **“Person.”** “Person” includes any individual, firm, partnership, joint venture, limited liability company, association, social club, fraternal organization, corporation, estate, trust, business trust, receiver, trustee, syndicate, the United States, this state, any county, city and county, municipality, district, or other political subdivision of the state, or any other group or combination acting as a unit.

7330. **“Pipeline.”** “Pipeline” means a fuel distribution system that moves motor vehicle fuel, in bulk, through a pipe, from a refinery to a terminal, from a terminal to another terminal, from a vessel to a terminal, or from a refinery or terminal to a vessel.

History.—Stats. 2001, Ch. 429 (AB 309), operative January 1, 2002, substituted “a fuel distribution system that moves motor vehicle fuel, in bulk, through a pipe, from a refinery to a terminal, from a terminal to another terminal, from a vessel to a terminal, or from a refinery or terminal to a vessel” for “any pipeline used at any time to transport motor vehicle fuel” after ““Pipeline” means”.

7331. **“Pipeline operator.”** “Pipeline operator” includes any person that owns, operates, or otherwise controls a pipeline.

7332. **“Position holder.”** “Position holder” includes any person that holds the inventory position in the motor vehicle fuel, as reflected on the records of the terminal operator. A person holds the inventory position in motor vehicle fuel when that person has a contractual agreement with the terminal operator for the use of storage facilities and terminaling services at a terminal with respect to the motor vehicle fuel. “Position holder” includes a terminal operator that owns motor vehicle fuel in its terminal.

7333. **“Rack.”** “Rack” means a mechanism for delivering motor vehicle fuel from a refinery or terminal into a truck, trailer, railroad car, or other means of nonbulk transfer.

7334. **“Refiner.”** “Refiner” includes any person that owns, operates, or otherwise controls a refinery.

7335. **“Refinery.”** “Refinery” means a facility used to produce motor vehicle fuel from crude oil, unfinished oils, natural gas liquids, or other hydrocarbons, and from which motor vehicle fuel may be removed by pipeline, by vessel, or at a rack.

7336. **“Removal.”** “Removal” means any physical transfer of motor vehicle fuel, and any use of motor vehicle fuel other than as a material in the production of motor vehicle fuel. However, motor vehicle fuel is not removed when it evaporates or is otherwise lost or destroyed.

7337. **“Sale.”** “Sale” means:

(a) The transfer of title to motor vehicle fuel (other than motor vehicle fuel in a terminal) to a buyer for consideration, which may consist of money, services, or other property.

(b) The transfer of the inventory position in the motor vehicle fuel in a terminal if the buyer becomes the position holder with respect to the motor vehicle fuel.

History.—Stats. 2001, Ch. 429 (AB 309), operative January 1, 2002, deleted “, or substantial incidents of ownership in,” after “The transfer of title to” in subdivision (a); and substituted “motor vehicle” for “taxable” after “with respect to the” in subdivision (b).

7338. **“Supplier.”** “Supplier” includes any person who is any of the following:

- (a) Blender, as defined in Section 7308.
- (b) Enterer, as defined in Section 7311.
- (c) Position holder, as defined in Section 7332.
- (d) Refiner, as defined in Section 7334.
- (e) Terminal operator, as defined in Section 7340.
- (f) Throughputter, as defined in Section 7341.

7339. **“Terminal.”** “Terminal” means a motor vehicle fuel storage and distribution facility that is supplied by pipeline or vessel, and from which motor vehicle fuel may be removed at a rack.

7340. **“Terminal operator.”** “Terminal operator” includes any person that owns, operates, or otherwise controls a terminal.

7341. **“Throughputter.”** “Throughputter” means any person that owns motor vehicle fuel within the bulk transfer/terminal system (other than in a terminal) or is a position holder.

7342. **“Train operator.”** “Train operator” includes any person that owns, operates, or controls a motor vehicle fuel-powered train and is licensed as a railroad by a state or federal agency.

7343. **“Vessel.”** “Vessel” means a waterborne vessel used for transporting motor vehicle fuel.

History.—Stats. 2001, Ch. 429 (AB 309), operative January 1, 2002, substituted “means a waterborne vessel used for transporting motor vehicle fuel” for “includes a barge and every description of motor craft, other than a seaplane on the water, used or capable of being used as a means of transportation on water” after ““Vessel””.

7344. **“Vessel operator.”** “Vessel operator” means any person that operates or otherwise controls a vessel.

History.—Stats. 2001, Ch. 429 (AB 309), operative January 1, 2002, substituted “means” for “includes” after ““Vessel operator””, deleted “owns” after “person that” and deleted “,” after “operates”.

7345. **“Tax-paid fuel.”** “Tax-paid fuel” or “tax paid” means the gallons of motor vehicle fuel acquired on either a temperature corrected or volumetric basis on which the tax in Section 7360 has been imposed at the time of or prior to the acquisition by the supplier or person.

History.—Added by Stats. 2001, Ch. 429 (AB 309), operative January 1, 2002.

CHAPTER 2. IMPOSITION OF TAX *

- § 7360. Levy of tax.
- § 7361. Floor stock tax.
- § 7362. Levy of tax; rack removal.
- § 7363. Levy of tax; other.
- § 7364. Levy of tax; backup tax.
- § 7365. Blender liability.
- § 7366. Enterer liability.
- § 7367. Highway vehicle operator/fueler liability.
- § 7368. Position holder liability.
- § 7369. Refiner liability.
- § 7370. Terminal operator liability.
- § 7371. Terminal operator exclusion.
- § 7372. Two-party exchange.
- § 7373. Presumption of removal.

7360. Levy of tax. (a) A tax of eighteen cents (\$0.18) is hereby imposed upon each gallon of fuel subject to the tax in Sections 7362, 7363, and 7364.

(b) If the federal fuel tax is reduced below the rate of nine cents (\$0.09) per gallon and federal financial allocations to this state for highway and exclusive public mass transit guideway purposes are reduced or eliminated correspondingly, the tax rate imposed by this section, on and after the date of the reduction, shall be recalculated by an amount so that the combined state and federal tax rate per gallon equals twenty-seven cents (\$0.27).

(c) If any person or entity is exempt or partially exempt from the federal fuel tax at the time of a reduction, the person or entity shall continue to be so exempt under this section.

7361. Floor stock tax. (a) For the privilege of storing, for the purpose of removal, sale, or use, every distributor owning motor vehicle fuel on January 1, 2002, shall pay a tax of eighteen cents (\$0.18) for each gallon of motor vehicle fuel according to the volumetric measure thereof, on which a tax has not been imposed under Part 2 (commencing with Section 7301) as in effect on December 31, 2001, and tax would have been imposed on any prior removal, entry, or sale of motor vehicle fuel had Sections 7360 to 7363, inclusive, applied to motor vehicle fuel for the period before January 1, 2002.

(b) For purposes of subdivision (a):

(1) "Storing" includes the possession in a storage facility, except an approved terminal or refinery, of motor vehicle fuel as well as the motor vehicle fuel purchased from and invoiced by the seller prior to January 1, 2002, and in transit on that date.

(2) "Owning" means having title to the motor vehicle fuel.

(3) "Distributor" means any person who was required to be licensed as a distributor under Part 2 (commencing with Section 7301) as in effect on December 31, 2001.

7362. Levy of tax; rack removal. The tax specified in Section 7360 is imposed on the removal of motor vehicle fuel in this state from a terminal if the motor vehicle fuel is removed at the rack.

* Added by Stats. 2000, Ch. 1053 (AB 2114), operative January 1, 2002.

7363. Levy of tax; Other. The tax specified in Section 7360 is also imposed on all of the following:

(a) The removal of motor vehicle fuel in this state from any refinery if either of the following applies:

(1) The removal is by bulk transfer and the refiner or the owner of the motor vehicle fuel immediately before the removal is not a licensed supplier.

(2) The removal is at the refinery rack.

(b) The entry of motor vehicle fuel into this state for sale, consumption, use, or warehousing if either of the following applies:

(1) The entry is by bulk transfer and the enterer is not a licensed supplier.

(2) The entry is not by bulk transfer.

(c) The removal or sale of motor vehicle fuel in this state to an unlicensed person unless there was a prior taxable removal, entry, or sale of the motor vehicle fuel.

(d) The removal or sale of blended motor vehicle fuel in this state by the blender thereof. The number of gallons of blended motor vehicle fuel subject to tax is the difference between the total number of gallons of blended motor vehicle fuel removed or sold and the number of gallons of previously taxed motor vehicle fuel used to produce the blended motor vehicle fuel.

7364. Levy of tax; Backup tax. The tax specified in Section 7360 is imposed as a backup tax as follows:

(a) On the delivery into the fuel tank of a motor vehicle fuel-powered highway vehicle of:

(1) Any motor vehicle fuel on which a claim for refund has been allowed; or

(2) Any liquid on which tax has not been imposed by this part, Part 3 (commencing with Section 8601), or Part 31 (commencing with Section 60001).

(b) On the sale of any motor vehicle fuel on which a claim for refund has been allowed.

(c) On the sale and delivery into the fuel tank of a motor vehicle fuel-powered highway vehicle of any liquid on which tax has not been imposed by this part, Part 3 (commencing with Section 8601), or Part 31 (commencing with Section 60001).

History.—Stats. 2001, Ch. 429 (AB 309), operative January 1, 2002, added “as follows:” after “as a backup tax” in the first paragraph; added subdivision letter designation (a) before “On the delivery into”; substituted “On” for “on” before “the delivery into”; deleted “or sale” after “highway vehicle”; deleted “any of the following” after “highway vehicle of” in subdivision (a); relettered former subdivisions (a) and (b) as subdivision (a) paragraphs (1) and (2); added “, or” after “has been allowed” in subdivision (a) paragraph (1); and added subdivision (c).

7365. Blender liability. Any person that produces blended motor vehicle fuel outside the bulk transfer/terminal system (the blender) shall pay tax as provided in subdivision (d) of Section 7363.

7366. Enterer liability. Every enterer shall pay tax on motor vehicle fuel imported into this state as provided in subdivision (b) of Section 7363.

7367. Highway vehicle operator/fueler liability. Every highway vehicle operator/fueler is liable for the backup tax imposed under Section 7364.

7368. Position holder liability. Every position holder shall pay the tax on the removal of motor vehicle fuel from a terminal as provided in Section 7362.

7369. Refiner liability. Every refiner shall pay tax on the removal of motor vehicle fuel from a refinery as provided in subdivision (a) of Section 7363.

7370. Terminal operator liability. The terminal operator is jointly and severally liable for the tax imposed under Section 7362 if both of the following apply:

(a) The position holder with respect to the motor vehicle fuel is a person other than the terminal operator and is not a licensed supplier.

(b) The terminal operator has not met the conditions of Section 7371.

7371. Terminal operator exclusion. A terminal operator is not liable for tax under Section 7370, if at the time of the removal, all of the following apply:

(a) The terminal operator is a licensed supplier.

(b) The terminal operator has an unexpired notification certificate from the position holder as required by the Internal Revenue Service.

(c) The terminal operator has no reason to believe that any information in the certificate is false.

7372. Two-party exchange. (a) The board may accept from the person who receives motor vehicle fuel removed at a refinery or terminal rack an amount equal to the tax due and required to be paid by the refiner or positionholder upon the removal of the motor vehicle fuel from a refinery or terminal rack, as if the amount were payment of the tax by the refiner or positionholder under Section 7362 or 7363, as the case may be, if the Internal Revenue Service authorizes payment of federal fuel taxes by the receiving party under a two-party exchange agreement or similar arrangement.

(b) The refiner or positionholder shall remain primarily liable for payment of the tax imposed by Section 7362 or 7363 for motor vehicle fuel removed at the refinery or terminal rack, as the case may be, plus any penalty or interest, until the amount is finally paid and credited to the account of the responsible refiner or positionholder; provided, however, that the board, at its discretion, may relieve the refiner or positionholder from primary liability for payment of tax imposed by Section 7362 or 7363 and hold another person primarily liable for the tax if (1) the Internal Revenue Service authorizes payment of fuel taxes by the receiving party under a two-party exchange agreement, and (2) under the Internal Revenue Service approach to two-party exchange agreements, another person is primarily liable for payment of the tax, and (3) the board elects to follow the Internal Revenue Service approach.

(c) The board may adopt those regulations as it deems appropriate to carry out this section.

History.—Added by Stats. 2001, Ch. 429 (AB 309), operative January 1, 2002.

7373. Presumption of Removal. (a) For the purpose of the proper administration of this part and to prevent evasion of the tax, unless the contrary is established, it shall be presumed that all motor vehicle fuel received at a terminal in this state, imported into this state, or refined and placed into storage for removal at a refinery in this state or blended motor vehicle fuel blended or converted in this state and no longer in the possession of the supplier has been removed or sold by the supplier.

(b) The presumption shall not apply if the supplier proves to the satisfaction of the board that both:

(1) The supplier has exercised ordinary care in entrusting control or possession of the motor vehicle fuel to another person.

(2) The person to whom the supplier has entrusted the control or possession of the motor vehicle fuel as bailee, consignee, employee, or agent, caused a removal or sale by the act of converting to that person's own use the motor vehicle fuel so entrusted to that person by the supplier.

(c) If the supplier proves to the satisfaction of the board, the existence of both of the circumstances in paragraphs (1) and (2) of subdivision (b), then the person who converted the motor vehicle fuel to his or her own use, as well as any other person receiving that motor vehicle fuel with the knowledge that it was so converted, shall be liable for payment of the tax imposed upon that removal or sale, and all of those persons shall be considered as suppliers for the purpose of Chapter 5 (commencing with Section 7651) or Chapter 6 (commencing with Section 7851) of this part.

History.—Added by Stats. 2001, Ch. 429 (AB 309), operative January 1, 2002.

CHAPTER 2.5. AIRCRAFT JET FUEL TAX *

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| Article 1. | Definitions. §§ 7385–7391. |
| 2. | Imposition of Tax. §§ 7392–7394. |
| 3. | Permit—Aircraft Jet Fuel Dealer. §§ 7395–7396. |
| 4. | Administrative Provisions. § 7397. |
| 5. | Disposition of Proceeds. § 7398. |

Article 1. Definitions

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|---------|-----------------------------|
| § 7385. | Construction. |
| § 7386. | “Aircraft.” |
| § 7387. | “Aircraft jet fuel.” |
| § 7388. | “Aircraft jet fuel dealer.” |
| § 7389. | “Aircraft jet fuel user.” |
| § 7390. | “Fuel tank.” |
| § 7391. | “Use.” |

7385. Construction. Except where the context otherwise requires, the definitions given in this chapter govern the construction of this chapter.

7386. “Aircraft.” “Aircraft” means any powered contrivance designed for navigation in the air except a rocket or missile.

* Added by Stats. 2000, Ch. 1053 (AB 2114), operative January 1, 2002.

7387. **“Aircraft jet fuel.”** “Aircraft jet fuel” means any inflammable liquid which is used or sold for use in propelling aircraft operated by the jet or turbine type of engine.

7388. **“Aircraft jet fuel dealer.”** “Aircraft jet fuel dealer” means any person who sells to an aircraft jet fuel user, aircraft jet fuel delivered in this state into the fuel tanks of aircraft or into a storage facility from which the fuel is withdrawn for use in aircraft.

7389. **“Aircraft jet fuel user.”** “Aircraft jet fuel user” means any person who uses aircraft jet fuel for the propulsion of an aircraft in this state except the following:

(a) A common carrier by air engaged in the business of transporting persons or property for hire or compensation under a certificate of public convenience and necessity issued pursuant to the authority of the laws of this state, of the United States or of any foreign government.

(b) A person engaged in the business of constructing or reconstructing by manufacture or assembly of completed aircraft, or modifying, overhauling, repairing, maintaining, or servicing of aircraft.

(c) The armed forces of the United States.

7390. **“Fuel tank.”** “Fuel tank” means any receptacle on an aircraft from which fuel is supplied for the propulsion of the aircraft.

7391. **“Use.”** “Use” means the placing of aircraft jet fuel into the fuel tank of an aircraft in this state.

Article 2. Imposition of Tax

- § 7392. Rate of tax.
- § 7393. Dealer’s returns.
- § 7394. Liability of purchaser.

7392. **Rate of tax.** For the privilege of using or selling aircraft jet fuel a tax is imposed upon every aircraft jet fuel dealer at the rate of two cents (\$0.02) for each gallon of that fuel sold to an aircraft jet fuel user or used by the dealer as an aircraft jet fuel user.

7393. **Dealer’s returns.** The aircraft jet fuel dealer shall make a return of the tax due under Section 7392 as required of suppliers under Section 7651. All of the provisions of this part relating to the collection of the tax shall be applicable to the collection of the tax imposed by Section 7392.

7394. **Liability of purchaser.** If a person certifies in writing to an aircraft jet fuel dealer that the sale or use of aircraft jet fuel purchased by him or her is not subject to the tax imposed by Section 7392 and the person uses the fuel as an aircraft jet fuel user, the person shall be liable for payment of the tax imposed by Section 7392 as if he or she were an aircraft jet fuel dealer making taxable sales of aircraft jet fuel at the time of that use and the number of gallons of fuel so used shall be deemed the number of gallons sold by him or her.

Article 3. Permit—Aircraft Jet Fuel Dealer

- § 7395. Dealer's permit.
- § 7396. Issuance of permit.

7395. Dealer's permit. Every person desiring to become an aircraft jet fuel dealer shall first secure from the board an aircraft jet fuel dealer permit. Applications for permits shall be made to the board on forms prescribed by the board. Before issuing the permit the board may require the applicant to furnish the bond required under Chapter 4 (commencing with Section 7451).

7396. Issuance of permit. Upon receipt of the application and after the deposit of such bond as the board may require, the board shall issue to the applicant an aircraft jet fuel dealer permit authorizing the applicant to become a dealer in aircraft jet fuel. The permit is valid until canceled, suspended, or revoked.

Article 4. Administrative Provisions

- § 7397. Applicable administrative provisions.

7397. Applicable administrative provisions. All of the administrative provisions of this part not inconsistent with this chapter shall be applicable to the administration of the tax imposed by Section 7392.

Article 5. Disposition of Proceeds

- § 7398. Disposition of proceeds.

7398. Disposition of proceeds. All money received in payment of the tax imposed by this chapter shall be deposited in the State Treasury to the credit of the Motor Vehicle Fuel Account in the Transportation Tax Fund, and after the payment of any refunds authorized by this part, the balance remaining shall be transferred to the Aeronautics Account in the State Transportation Fund for allocation pursuant to Section 8352.3.

CHAPTER 3. EXEMPTIONS *

- § 7401. Exemptions.
- § 7402. Exemption certificate; gasoline blendstock.
- § 7403. Exemption certificate; train operator.
- § 7403.1. Train operator license.
- § 7403.2. Train operator report.
- § 7404. Exemption certificate; purchaser liability.
- § 7405. Misuse of exemption certificate.

7401. Exemptions. (a) The provisions of this part requiring the payment of motor vehicle fuel taxes do not apply to any of the following:

(1) Any entry or removal from a terminal or refinery of motor vehicle fuel transferred in bulk to a refinery or terminal if the persons involved (including the terminal operator) are licensed suppliers.

(2) The removal of motor vehicle fuel, if all of the following apply:

(A) The motor vehicle fuel is removed by railroad car from an approved refinery and is received at an approved terminal.

* Added by Stats. 2000, Ch. 1053 (AB 2114), operative January 1, 2002.

(B) The refinery and the terminal are operated by the same licensed supplier.

(C) The refinery is not served by pipeline (other than a pipeline for the receipt of crude oil) or vessel.

(3) Motor vehicle fuel which, pursuant to the contract of sale, is required to be shipped and is shipped to a point outside of this state by a supplier by means of any of the following:

(A) Facilities operated by the supplier.

(B) Delivery by the supplier to a carrier, customs broker, or forwarding agency, whether hired by the purchaser or not, for shipment to the out-of-state point.

(C) Delivery by the supplier to any vessel clearing from a port of this state for a port outside of this state and actually exported from this state in the vessel.

(4) Motor vehicle fuel sold by credit card certified by the United States Department of State to any consulate officer or consulate employee of a foreign government who is not engaged in any private occupation for gain within this state, who uses the motor vehicle fuel in a motor vehicle that is registered with the United States Department of State, and whose government has done either of the following:

(A) Entered into a treaty with the United States providing for the exemption of its representatives from national, state, and municipal taxes.

(B) Granted a similar exemption to representatives of the United States.

(5) Motor vehicle fuel sold to the United States armed forces for use in ships or aircraft, or for use outside this state.

(6) Gasoline blendstocks removed from a pipeline or vessel, when the gasoline blendstocks are received by a licensed industrial user.

(7) Any entry or removal from a terminal or refinery of gasoline blendstocks that are received at an approved terminal or refinery if the person otherwise liable for the tax is a licensed supplier.

(8) Any entry or removal from a terminal or refinery of gasoline blendstocks not in connection with a sale if the person otherwise liable for the tax is a licensed supplier and the person does not use the gasoline blendstocks to produce finished gasoline.

(9) Any entry or removal from a terminal or refinery of gasoline blendstocks in connection with a sale if the person otherwise liable for the tax is a licensed supplier and at the time of sale, such person has an unexpired exemption certificate described in Section 7402 from the buyer and has no reason to believe any information in the certificate is false.

(10) If paragraph (8) or (9) applied to the removal or entry of gasoline blendstocks, any resale made of gasoline blendstocks, when the person has an unexpired exemption certificate described in Section 7402 from the buyer and has no reason to believe any information in the certificate is false.

(11) Motor vehicle fuel sold by a supplier to a train operator for use in a motor vehicle fuel-powered train or for other off-highway use and the supplier has on hand an exemption certificate described in Section 7403 from the train operator.

(b) For purposes of this section:

(1) “Carrier” means a person or firm engaged in the business of transporting for compensation property owned by other persons, and includes both common and contract carriers.

(2) “Forwarding agent” means a person or firm engaged in the business of preparing property for shipment or arranging for its shipment.

7402. Exemption certificate; gasoline blendstock. (a) The certificate to be provided by a buyer of gasoline blendstocks consists of a statement that is signed under penalty of perjury by a person with authority to bind the buyer. A new certificate must be given if any information in the current certificate changes. The certificate may be included as part of any business records normally used to document a sale. The certificate expires on the earliest of the following dates:

(1) The date one year after the effective date of the certificate.

(2) The date a new certificate is provided by the buyer to the seller.

(b) An exemption certificate for gasoline blendstocks that states that the blendstocks will not be used to produce finished gasoline shall contain that information and be in the form as the board may prescribe.

7403. Exemption certificate; train operator. (a) The certificate to be provided by a train operator consists of a statement that is signed under penalties of perjury by a person with authority to bind the buyer. A new certificate must be given if any information in the current certificate changes. The certificate may be included as part of any business records normally used to document a sale.

(b) An exemption certificate for motor vehicle fuel used in a motor vehicle fuel-powered train or for other off-highway use shall contain that information and be in the form as the board may prescribe.

7403.1. Train operator license. Prior to issuing an exemption certificate as provided in Section 7403, the train operator shall obtain a license from the board. Every application for a license shall be made upon a form prescribed by the board and shall set forth the name under which the applicant transacts or intends to transact business, the location of his or her place or places of business, and such other information as the board may require. The application shall be signed by the owner if a natural person; in the case of an association or partnership, by a member or partner; in the case of a corporation, by an executive officer or some person specifically authorized by the corporation to sign the application.

7403.2. Train operator report. (a) For the privilege of purchasing motor vehicle fuel exempt from taxes under paragraph (11) of subdivision (a) of Section 7401, each train operator must make a report to the board showing:

(1) The name and license number of the supplier from whom it purchased motor vehicle fuel and the number of gallons of motor vehicle fuel purchased that is exempt from the tax.

(2) Any other information required by the board.

(b) Each train operator shall prepare and file with the board a report in the form as prescribed by the board, which may include, but not be limited to, electronic media showing the information in subdivision (a) during each quarterly reporting period. The report shall be filed with the board on or before the last day of the month following the close of the quarterly period to which it relates. To facilitate the administration of this part, the board may require the filing of these reports for other than quarterly periods. Reports shall be authenticated in a form or pursuant to methods as may be prescribed by the board.

(c) All of the administrative provisions of this part relating to a supplier shall be applicable to a train operator.

(d) The board may revoke the train operator's license provided for in Section 7403.1 due to the filing of inaccurate or improper reports.

History.—Stats. 2001, Ch. 429 (AB 309), operative January 1, 2002, added the second sentence. Stats. 2002, Ch. 459 (AB 1936), operative January 1, 2003, deleted "on forms prescribed by the board" after "file with the board" and added "in the form as prescribed by the board, which may include, but not be limited to, electronic media" after "a report" in the first sentence of, and added the fourth sentence to, subdivision (b).

7404. Exemption certificate; purchaser liability. If a purchaser gives an exemption certificate for motor vehicle fuel pursuant to this chapter to the effect that the motor vehicle fuel purchased will be used in an exempt manner, and sells the motor vehicle fuel or uses the motor vehicle fuel in some other manner or for some other purpose, the purchaser will be liable for payment of the tax under Chapter 2 (commencing with Section 7360) of this part. The tax, applicable penalties, and interest shall become due and payable and shall be ascertained and determined in the same manner as the backup tax under Section 7727.

History.—Stats. 2001, Ch. 429 (AB 309), operative January 1, 2002, added the second sentence.

7405. Misuse of exemption certificate. (a) Any person, including any officer or employee of a corporation, who gives an exemption certificate pursuant to this chapter for motor vehicle fuel that he or she knows at the time of purchase is not to be used by him or her or the corporation in an exempt manner, for the purpose of evading payment of the amount of the tax applicable to the transaction, is guilty of a misdemeanor punishable as provided in Section 8405.

(b) Any person, including any officer or employee of a corporation, who gives an exemption certificate for motor vehicle fuel pursuant to this chapter that he or she knows at the time of purchase is not to be used by him or her or the corporation in an exempt manner, is liable to the state for the amount of tax that would be due if he or she had not given that certificate. In addition to the tax, the person shall be liable to the state for a penalty of 25 percent of the tax or one thousand dollars (\$1,000), whichever is greater, for each certificate issued for personal gain or to evade the payment of taxes.

History.—Stats. 2001, Ch. 429 (AB 309), operative January 1, 2002, substituted “or” for “and” after “percent of the tax” and added “, whichever is greater,” after “one thousand dollars (\$1,000)” in the second sentence of subdivision (b).

CHAPTER 4. LICENSES AND BONDS *

- Article 1. License for Supplier. §§ 7451–7453.
- 2. License for Industrial User. § 7460.
- 3. License for Pipeline Operator and Vessel Operator. § 7470.
- 4. Security. §§ 7486–7487.
- 5. Denial of License. §§ 7491–7493.
- 6. Revocation of Licenses. §§ 7506–7511.
- 7. Licensing of Locations. § 7520.

Article 1. License for Supplier

- § 7451. Supplier license.
- § 7452. Applications
- § 7453. License not transferable.

7451. Supplier license. Every person before becoming a supplier shall apply to the board for a license authorizing the person to engage in business as a supplier on forms prescribed by the board. A supplier’s license shall be issued only to a person who is a supplier of motor vehicle fuel as defined in Section 7338. It is unlawful for any person to be a supplier without first securing a license.

7452. Applications. Applications shall be made on forms to be prescribed, prepared, and furnished by the board.

7453. License not transferable. Before granting a license authorizing a person to engage in business as a supplier, the board may require the person to file with the board security pursuant to Section 7486. The license issued to any supplier is not transferable and is valid until canceled or revoked.

History.—Stats. 2001, Ch. 429 (AB 309), operative January 1, 2002, added the first sentence.

Article 2. License for Industrial User

- § 7460. Application for industrial user license.

7460. Application for industrial user license. Every person before becoming an industrial user shall apply to the board for a license authorizing the person to operate as an industrial user on forms prescribed by the board. An industrial user license shall be issued only to a person who is an industrial user of motor vehicle fuel as defined in Section 7322. It is unlawful for a person to act as an industrial user without first securing a license.

* Added by Stats. 2000, Ch. 1053 (AB 2114), operative January 1, 2002.

Article 3. License for Pipeline Operator and Vessel Operator

§ 7470. Application for pipeline operator and vessel operator.

7470. Application for pipeline operator and vessel operator. Every person before becoming a pipeline operator or a vessel operator shall apply to the board for a license on forms prescribed by the board. A pipeline operator license or a vessel operator license shall be issued only to a person who is a pipeline operator or a vessel operator as defined in Sections 7331 and 7344. It is unlawful for a person to act as a pipeline operator or a vessel operator without first securing a license.

Article 4. Security

§ 7486. Bond requirements. [Repealed.]

§ 7486. Security requirements.

§ 7487. Amount of bond. [Repealed.]

§ 7487. Security; payment on account.

7486. Bond requirements. [Repealed by Stats. 2001, Ch. 429 (AB 309), operative January 1, 2002.]

7486. Security requirements. The board, whenever it deems it necessary to ensure compliance with this part or any rule or regulation adopted under this part, may require any person to deposit with it any security as it may determine appropriate. The amount of the security shall be fixed by the board but shall not be more than three times the estimated average monthly tax liability of the person. The total amount of security shall not be in excess of one million dollars (\$1,000,000) where the person has established to the satisfaction of the board that this security, together with property to which the lien imposed by Section 7872 attaches, is sufficient security to ensure payment of taxes equivalent to three times the estimated average monthly tax liability of the person. The amount of the security may be increased or decreased by the board at any time. Any security in the form of cash or insured deposits in banks and savings and loan institutions shall be held by the board in trust to be used solely in the manner provided for in this section and Section 7487. Any security in the form of a bond or bonds shall be duly executed by an admitted surety insurer, payable to the state, conditioned upon faithful performance of all the requirements of this part, and expressly providing for the payment of all taxes, penalties, and other obligations of the person arising out of this part. Security held by the board shall be released after a three-year period in which the person has filed all returns and paid all tax to the state or any amount of tax required to be collected and paid to the state within the time required.

History.—Added by Stats. 2001, Ch. 429 (AB 309), operative January 1, 2002.

7487. Amount of bond. [Repealed by Stats. 2001, Ch. 429 (AB 309), operative January 1, 2002.]

7487. Security; payment on account. If, at the time a person ceases to operate under this part, the board holds a security pursuant to Section 7486 in the form of cash, or insured deposits in banks or savings and loan

institutions, the security when applied to the account of the taxpayer shall be deemed to be a payment on account of any liability of the taxpayer to the Controller on the date the person ceases to operate under this part.

History.—Added by Stats. 2001, Ch. 429 (AB 309), operative January 1, 2002.

Article 5. Denial of License

- § 7491. Denial of license.
- § 7492. Hearing.
- § 7493. Notice of hearing.

7491. Denial of license. The board may refuse to issue a license under this part:

(a) If the application therefor is filed by an applicant who formerly held any license under this part which, prior to the time of filing the application, has been revoked for cause by the board; or

(b) If the board determines that the application therefor is not filed in good faith or made by the real person in interest.

7492. Hearing. Before the refusal, the board shall grant the applicant a hearing and shall give him or her at least 10 days' written notice of the time and place thereof.

7493. Notice of hearing. The notice shall be addressed to the applicant at his or her address as it appears in the records of the board, and shall be given in the manner prescribed in Section 7671 for giving notice of a deficiency determination.

Article 6. Revocation of License

- § 7505. Revocation of license.
- § 7506. Revocation because of nonuse.
- § 7507. Notice of revocation.
- § 7508. Cancellation or revocation of licenses; hearings.
- § 7509. Tax liability upon revocation.
- § 7510. Reinstatement.
- § 7511. Unlawful operation after revocation.

7505. Revocation of license. The board may revoke the license of any person who refuses or neglects to comply with any provisions of this part or any rule or regulation of the board prescribed and adopted under this part.

7506. Revocation because of nonuse. The board may revoke any supplier's license held by a person who does not engage in, or who discontinues, the removal, entry, or sale of motor vehicle fuel, producing of blended motor vehicle fuel, owning or holding inventory position of motor vehicle fuel, or owning or operating a refinery or terminal as any of the following:

- (a) A blender, as defined in Section 7308.
- (b) An enterer, as defined in Section 7311.
- (c) A position holder, as defined in Section 7332.
- (d) A refiner, as defined in Section 7334.

- (e) A terminal operator, as defined in Section 7340.
- (f) A throughputter, as defined in Section 7341.

7507. Notice of revocation. Before revoking any license the board shall notify the licensee to show cause within 10 days after the notice is given, why his or her license should not be revoked. The notice shall be given in the manner prescribed in Section 7671 for giving notice of a deficiency determination.

7508. Cancellation or revocation of licenses; hearings. The board may cancel any license issued under this part immediately upon surrender thereof but before revoking a license the board shall allow the person an opportunity to show cause as provided in Section 7507.

7509. Tax liability upon revocation. Upon revocation or cancellation of the license of the person or upon his or her cessation of business, all motor vehicle fuel remaining in his or her possession or ownership shall be deemed removed, entered, sold, delivered, or used and subject to jeopardy determination as provided in Section 7698 if, in the judgment of the board, it is necessary to ensure payment of the tax with respect to the removal, entry, sale, delivery, or use of the motor vehicle fuel.

7510. Reinstatement. Subsequent to the revocation of the license of a person, the board shall reinstate the permit when the person pays the amount of tax determined, together with interest and penalties, fully complies with this part, and pays a fee of fifty dollars (\$50) to the board for reinstatement. The fee shall not be subject to refund except as provided in Section 8126.

7511. Unlawful operation after revocation. It is unlawful for any person to operate in this state after a license has been revoked.

Article 7. Licensing of Locations

§ 7520. Requirement to disclose multiple locations.

7520. Requirement to disclose multiple locations. Every person required to be licensed by the board shall provide the board with the names and addresses of all agents operating in this state, the location of all offices or other places of business in this state, and any other information as the board may require.

CHAPTER 5. DETERMINATIONS AND PAYMENTS *

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| Article 1. | Returns, Reports, and Payments. §§ 7651–7658.5. | |
| 2. | Prepayments. §§ 7659–7659.8. | |
| 2.5. | Payment by Electronic Funds Transfer §§ 7659.9–7659.93. | |
| 3. | Determination If No Return Made. §§ 7660–7663. | |
| 4. | Deficiency Determinations. §§ 7670–7676. | |
| 5. | Jeopardy Determinations and Weekly Payments. §§ 7698–7707. | |
| 6. | Redeterminations. §§ 7710–7716. | |
| 7. | Payments by Unlicensed Persons. §§ 7726–7732. | |

* Added by Stats. 2000, Ch. 1053 (AB 2114), operative January 1, 2002.

Article 1. Returns, Reports, and Payments

- § 7651. Return.
- § 7652. Return; throughputter. [Repealed.]
- § 7652.5. Report; terminal operator.
- § 7652.7. Report; pipeline operator and vessel operator.
- § 7653. Return; floor stock tax.
- § 7654. Penalty; failure to file report or incomplete report. [Repealed.]
- § 7655. Penalty; failure to pay.
- § 7656. Extension of time.
- § 7657. Excusable delay.
- § 7657.1. Excusable delay; reliance on Board advice.
- § 7658. Disaster.
- § 7658.1. Relief of interest.
- § 7658.5. Application of payment to delinquent tax liabilities.

7651. Return. Each supplier shall prepare and file with the board a return in the form as prescribed by the board, which may include, but not be limited to, electronic media showing the total number of gallons of motor vehicle fuel removed, sold, or entered within this state during each calendar month, or that monthly period ended during that calendar month as the board may authorize, the amount of tax due for the month covered by the return, and other information as the board deems necessary for the proper administration of this part. The person shall file the return on or before the last day of the month following the monthly period to which it relates, together with a remittance payable to the Controller for the amount of tax due for that period less whatever amounts may have been paid theretofore for the same period because of returns, prepayment forms, and payments made on a weekly basis. To facilitate the administration of this part, the board may require the filing of the returns for other than monthly periods. Returns shall be authenticated in a form or pursuant to methods as may be prescribed by the board.

History.—Stats. 2002, Ch. 459 (AB 1936), deleted “on forms prescribed by the board” after “and file with the board” and added “in the form as prescribed by the board, which may include, but not be limited to, electronic media” after “a return” in the first sentence of, and added the fourth sentence.

7652. Return; throughputter. [Repealed by Stats. 2001, Ch. 429 (AB 309), operative January 1, 2002.]

7652.5. Report; terminal operator. (a) Each terminal operator shall prepare and file with the board a report in the form as prescribed by the board, which may include, but not be limited to, electronic media showing, for the calendar month, or that monthly period ended during the calendar month as the board may authorize, the following:

- (1) The name and license number of each person that is a position holder at each terminal it operates;
- (2) The amount of motor vehicle fuel received at each terminal it operates;
- (3) The identity of each position holder with respect to the rack removals of motor vehicle fuel from each terminal it operates and the volume and dates of the removals;
- (4) The amount of motor vehicle fuel stored at each terminal it operates;

(5) The destination (by state) of all motor vehicle fuel removed at a terminal rack of each terminal it operates, to the extent that information has been provided to the terminal operator; and

(6) Any other information required by the board for the proper administration of this part. The terminal operator shall file the report on or before the last day of the month following the monthly period to which it relates. To facilitate the administration of this part, the board may require the filing of the reports for other than monthly periods. Reports shall be authenticated in a form or pursuant to methods as may be prescribed by the board.

(b) Upon written approval of the board, a terminal operator may satisfy the requirements of subdivision (a) above by executing and providing to the board a consent and authorization for the Internal Revenue Service to provide to the board under Section 6103 of the Internal Revenue Code, the return filed by the terminal operator under Section 48.4101-2 of Title 26 of the Code of Federal Regulations. The board may, in its sole discretion, rescind its approval and require a terminal operator to file reports as specified in subdivision (a).

History.—Stats. 2002, Ch. 459 (AB 1936), deleted “on forms prescribed by the board” after “and file with the board” and added “in the form as prescribed by the board, which may include, but not be limited to, electronic media” after “a report” in the first sentence of, and added the third sentence to paragraph (6) to, subdivision (a).

7652.7. Report; pipeline operator and vessel operator. (a) Each pipeline operator and vessel operator shall prepare and file with the board a report in the form as prescribed by the board, which may include, but not be limited to, electronic media showing, for the calendar month, or that monthly period ended during the calendar month as the board may authorize, all of the following:

(1) The amount of motor vehicle fuel delivered to each terminal or refinery.

(2) The location of the terminal or refinery where the motor vehicle fuel was delivered.

(3) The date of delivery.

(4) Any other information required by the board for the proper administration of this part. The pipeline operator and vessel operator shall file the report on or before the last day of the month following the monthly period to which it relates. To facilitate the administration of this part, the board may require the filing of the reports for other than monthly periods. Reports shall be authenticated in a form or pursuant to methods as may be prescribed by the board.

(b) Upon written approval of the board, a pipeline operator and vessel operator may satisfy the requirements of subdivision (a) by executing and providing to the board a consent and authorization for the Internal Revenue Service to provide to the board under Section 6103 of the Internal Revenue Code, the return filed by the pipeline operator and vessel operator under Section 48.4101-2 of Title 26 of the Code of Federal Regulations. The board

may, in its sole discretion, rescind its approval and require a pipeline operator and vessel operator to file reports as specified in subdivision (a).

History.—Stats. 2002, Ch. 459 (AB 1936), deleted “on forms prescribed by the board” after “and file with the board” and added “in the form as prescribed by the board, which may include, but not be limited to, electronic media” after “a report” in the first sentence of, and added the third sentence to the second paragraph of paragraph (4) of, subdivision (a).

7653. Return; floor stock tax. (a) Each person subject to the tax imposed under Section 7361, on or before February 28, 2002, shall prepare and file with the board, on forms prescribed by the board, a return showing the total number of gallons of motor vehicle fuel owned by the person on January 1, 2002, for which a tax has not been imposed under Part 2 (commencing with Section 7301) as in effect on December 31, 2001, the amount of the tax imposed, and any other information that the board deems necessary for the proper administration of this part. The return shall be accompanied by a remittance payable to the Controller in the amount of tax due.

(b) Any distributor, as defined in paragraph (3) of subdivision (b) of Section 7361, who has tax-paid motor vehicle fuel in the bulk transfer/terminal system on January 1, 2002, which was purchased prior to January 1, 2002, shall report the tax-paid gallons on the subdivision (a) return. The amount of taxes paid on the tax-paid gallons shall constitute a credit against the amount of taxes due and payable on the subdivision (a) return, or on the supplier’s January 2002 return required under Section 7651, and for each succeeding return until the credit is fully utilized.

History.—Stats. 2001, Ch. 429 (AB 309), operative January 1, 2002, lettered the former sole paragraph as subdivision (a), and added subdivision (b).

7654. Penalty; failure to file report or incomplete report. [Repealed by Stats. 2001, Ch. 429 (AB 309), operative January 1, 2002.]

7655. Penalty; failure to pay. (a) Any person who fails to pay the amount of tax shown to be due by his or her return on or before the last day of the month following the monthly period to which it relates shall pay a penalty of 10 percent of the tax, together with interest on that tax at the modified adjusted rate per month, or fraction thereof, established pursuant to Section 6591.5, from the date on which the tax became due and payable to the state until the date of payment.

(b) Any supplier who fails to file a return in accordance with the due date set forth in Section 7651 shall pay a penalty of 10 percent of the amount of the tax, exclusive of prepayments, with respect to the period for which the return is required.

(c) The penalties imposed by this section shall be limited to a maximum of 10 percent of the tax for which the return is required, exclusive of any prepayments, for any one return.

History.—Stats. 2001, Ch. 251 (AB 1123), in effect January 1, 2002, lettered the former sole paragraph as subdivision (a), and added subdivision (b) and (c).

7656. Extension of time. The board for good cause may extend for not to exceed one month the time for making any report or return or paying any tax required under this part. The extension may be granted at any time if a request therefor is filed with the board within or prior to the period for which the extension may be granted. Any person to whom an extension is granted shall pay, in addition to the tax, interest at the modified adjusted rate per month, or fraction thereof, established pursuant to Section 6591.5, from the date on which the tax would have been due without the extension to the date of payment.

7657. Excusable delay. (a) If the board finds that a person's failure to make a timely report, return, or payment is due to reasonable cause and circumstances beyond the person's control, and occurred notwithstanding the exercise of ordinary care and the absence of willful neglect, the person may be relieved of the penalty provided by Sections 7655, 7659.5, 7659.6, 7659.9, 7660, 7705, and 7713.

(b) Except as provided in subdivision (c), any person seeking to be relieved of the penalty shall file with the board a statement under penalty of perjury setting forth the facts upon which he or she bases his or her claim for relief.

(c) The board shall establish criteria that provide for efficient resolution of requests for relief pursuant to this section.

History.—Stats. 2001, Ch. 429 (AB 309), operative January 1, 2002, lettered the former sole paragraph as subdivision (a); deleted "7654," after "provided by Sections" and added "7659.9" after "7659.6," in subdivision (a); deleted former second paragraph; and added subdivisions (b) and (c).

7657.1. Excusable delay; reliance on Board advice. (a) If the board finds that a person's failure to make a timely return or payment is due to the person's reasonable reliance on written advice from the board, the person may be relieved of the taxes imposed by this part and any penalty or interest added thereto.

(b) For purposes of this section, a person's failure to make a timely return or payment shall be considered to be due to reasonable reliance on written advice from the board, only if the board finds that all of the following conditions are satisfied:

(1) The person requested in writing that the board advise him or her whether a particular activity or transaction is subject to tax under this part. The specific facts and circumstances of the activity or transaction shall be fully described in the request.

(2) The board responded in writing to the person regarding the written request for advice, stating whether or not the described activity or transaction is subject to tax, or stating the conditions under which the activity or transaction is subject to tax.

(3) The liability for taxes applied to a particular activity or transaction which occurred before either of the following:

(A) Before the board rescinded or modified the advice so given, by sending written notice to the person of the rescinded or modified advice.

(B) Before a change in statutory or constitutional law, a change in the board's regulations, or a final decision of a court, which renders the board's earlier written advice no longer valid.

(c) Any person seeking relief under this section shall file with the board all of the following:

(1) A copy of the person's written request to the board and a copy of the board's written advice.

(2) A statement under penalty of perjury setting forth the facts on which the claim for relief is based.

(3) Any other information which the board may require.

(d) Only the person making the written request shall be entitled to rely on the board's written advice to that person.

7658. Disaster. If the board finds that a person's failure to make a timely return or payment was due to a disaster, and occurred notwithstanding the exercise of ordinary care and the absence of willful neglect, the person may be relieved of the interest provided by Sections 7655, 7656, 7659.9, 7661, and 7706.

Any person seeking to be relieved of the interest shall file with the board a statement under penalty of perjury setting forth the facts upon which he or she bases his or her claim for relief.

History.—Stats. 2001, Ch. 251 (AB 1123), in effect January 1, 2002, added "7659.9," after "7656" in the first paragraph.

7658.1. Relief of interest. (a) The board, in its discretion, may relieve all or any part of the interest imposed on a person by this part where the failure to pay tax is due in whole or in part to an unreasonable error or delay by an employee of the board acting in his or her official capacity.

(b) For purposes of this section, an error or delay shall be deemed to have occurred only if no significant aspect of the error or delay is attributable to an act of, or a failure to act by, the person.

(c) Any person seeking relief under this section shall file with the board a statement under penalty of perjury setting forth the facts on which the claim for relief is based and any other information which the board may require.

(d) The board may grant relief only for interest imposed on tax liabilities that arise during taxable periods commencing on or after January 1, 2000.

History.—Stats. 2001, Ch. 251 (AB 1123), in effect January 1, 2002, substituted "this part" for "Sections 7655 and 7661" after "on a person by" in subdivision (a).

7658.5. Application of payment to delinquent tax liabilities. Every payment on a delinquent tax shall be applied as follows:

(a) First, to any interest due on the tax.

(b) Second, to any penalty imposed by this part.

(c) The balance, if any, to the tax itself.

Article 2. Prepayments

- § 7659. Application of article.
- § 7659.1. Prepayment.
- § 7659.2. Prepayment form; when due.
- § 7659.3. Credit for prepayment.
- § 7659.4. Determination of estimated measure of tax liability.
- § 7659.5. Penalty for late prepayment.
- § 7659.6. Delinquent prepayment but timely return and payment; penalty.
- § 7659.7. Penalty in case of negligence or intentional disregard.
- § 7659.8. Service of notice.

7659. Application of article. The provisions of this article apply to suppliers required to file a supplier's return pursuant to Section 7651.

7659.1. Prepayment. Upon written notification by the board, any person whose estimated tax liability under this part averages nine hundred thousand dollars (\$900,000) or more per month, as determined by the board, shall, without regard to the tax in any one month, make a prepayment as prescribed in this section. The prepayment requirement may be satisfied by making a prepayment of an amount not less than 95 percent of the tax liability for the month to which the prepayment applies or a prepayment not less than 95 percent of the amount of the tax liability reported for the previous month. Prepayments shall be made for the monthly periods designated by the board and during each succeeding monthly period until further notification by the board in writing.

7659.2. Prepayment form; when due. Except in the case of a person required to remit amounts due in accordance with Article 2.5 (commencing with Section 7659.9), for purposes of Section 7659.1, each prepayment shall be accompanied by a report of the amount of that prepayment in a form prescribed by the board and shall be filed with the board on or before the 15th day following each monthly period together with a remittance payable to the Controller of the amount due.

History.—Stats. 2001, Ch. 251 (AB 1123), in effect January 1, 2002, substituted "Except in the case of a person required to remit amounts due in accordance with Article 2.5 (commencing with Section 7659.9), for purposes of Section 7659.1, each" for "Each" before "prepayment shall be accompanied".

7659.3. Credit for prepayment. The amount of the prepayment shall constitute a credit against the amount of the taxes due and payable for the monthly period for which the prepayment was made and for each succeeding monthly prepayment or period until the credit is fully utilized.

7659.4. Determination of estimated measure of tax liability. In determining whether a person's estimated tax liability averages nine hundred thousand dollars (\$900,000) or more per month, the board may consider tax returns filed pursuant to this part as well as any information in the board's possession or which may come into its possession.

7659.5. Penalty for late prepayment. Any person required to make a prepayment pursuant to Section 7659.1 who fails to make a timely prepayment but makes that prepayment before the last day of the month

following the monthly period for which the prepayment was due, shall also pay a penalty of 6 percent of the amount of prepayment.

7659.6. Delinquent prepayment but timely return and payment; penalty. Any person required to make a prepayment pursuant to Section 7659.1 who fails to make a prepayment before the last day of the month following the monthly period for which the prepayment became due and who files a timely return and payment for the monthly period for which the prepayment became due shall pay a penalty of 6 percent of the amount equal to 95 percent of the tax liability for the monthly period for which the required prepayment was not made.

7659.7. Penalty in case of negligence or intentional disregard. (a) If the failure to make a prepayment as described in Section 7659.6 is due to negligence or intentional disregard of this part or authorized rules and regulations, the penalty shall be 10 percent, instead of 6 percent.

(b) If any part of a deficiency in prepayment is due to negligence or intentional disregard of this part or authorized rules and regulations, a penalty of 10 percent of the deficiency shall be paid.

(c) The provisions of this section shall not apply to amounts subject to the provisions of Sections 7655, 7660, 7662, 7672, 7673, and 7726.

7659.8. Service of notice. Notification by the board, provided for in Section 7659.1, may be served personally or by mail in the manner prescribed in Section 7671 for service of notice of a deficiency determination.

Article 2.5. Payment by Electronic Funds Transfer *

- § 7659.9. Electronic funds transfer program.
- § 7659.91. Relief of penalty.
- § 7659.92. Definitions.
- § 7659.93. Electronic filing.

7659.9. Electronic funds transfer program. (a) Any person whose estimated tax liability under this part averages twenty thousand dollars (\$20,000) or more per month, as determined by the board pursuant to methods of calculation prescribed by the board, shall remit amounts due by an electronic funds transfer under procedures prescribed by the board.

(b) Any person whose estimated tax liability under this part averages less than twenty thousand dollars (\$20,000) per month may elect to remit amounts due by electronic funds transfer with the approval of the board. The election shall be operative for a minimum of one year.

(c) Any person remitting amounts due pursuant to subdivision (a) or (b) shall perform an electronic funds transfer in compliance with the due dates set forth in Article 1 (commencing with Section 7651) and Article 1.1 (commencing with Section 7659). Payment is deemed complete on the date the electronic funds transfer is initiated, if settlement to the state's demand account occurs on or before the banking day following the date the transfer

* Article 2.5 was added by Stats. 2001, Ch. 251 (AB 1123), in effect January 1, 2002.

is initiated. If settlement to the state's demand account does not occur on or before the banking day following the date the transfer is initiated, payment is deemed to occur on the date settlement occurs.

(d) Any person remitting taxes by electronic funds transfer shall, on or before the due date of the remittance, file a return for the preceding reporting period in the form and manner prescribed by the board. Any person who fails to timely file the required return shall pay a penalty of 10 percent of the amount of taxes, exclusive of prepayments, with respect to the period for which the return is required.

(e) (1) Except as provided in paragraph (2), any person required to remit taxes pursuant to this article who remits those taxes by means other than appropriate electronic funds transfer shall pay a penalty of 10 percent of the taxes incorrectly remitted.

(2) A person required to remit prepayments pursuant to this article who remits a prepayment by means other than an appropriate electronic funds transfer shall pay a penalty of 6 percent of the prepayment incorrectly remitted.

(f) Except as provided by Sections 7659.5 and 7659.6, any person who fails to pay any tax to the state or any amount of tax required to be paid to the state, except amounts of determinations made by the board under Article 2 (commencing with Section 7660) or Article 2.5 (commencing with Section 7670), within the time required shall pay a penalty of 10 percent of the tax or amount of tax, in addition to the tax or amount of tax, plus interest at the modified adjusted rate per month, or fraction thereof, established pursuant to Section 6591.5, from the date on which the tax or the amount of tax required to be paid became due and payable to the state until the date of payment.

(g) In determining whether a person's estimated tax liability averages twenty thousand dollars (\$20,000) or more per month, the board may consider tax returns filed pursuant to this part and any other information in the board's possession.

(h) Except as provided in subdivision (i), the penalties imposed by subdivisions (d), (e), and (f) shall be limited to a maximum of 10 percent of the taxes due, exclusive of prepayments, for any one return. Any person remitting taxes by electronic funds transfer shall be subject to the penalties under this section and not Section 7655.

(i) The penalties imposed with respect to paragraph (2) of subdivision (e) and Sections 7659.5 and 7659.6 shall be limited to a maximum of 6 percent of the prepayment amount.

(j) The board shall promulgate regulations pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code for purposes of implementing this section.

7659.91. Relief of penalty. If the board finds that a person's failure to make payment by an appropriate electronic funds transfer in accordance with board procedures is due to reasonable cause and circumstances beyond the person's control, and occurred notwithstanding the exercise of ordinary care

and in the absence of willful neglect, that person shall be relieved of the penalty provided in subdivision (e) of Section 7659.9.

Any person seeking to be relieved of the penalty shall file with the board a statement under penalty of perjury setting forth the facts upon which he or she bases his or her claim for relief.

7659.92. Definitions. (a) “Electronic funds transfer” means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, that is initiated through an electronic terminal, telephonic instrument, or computer or magnetic tape, so as to order, instruct, or authorize a financial institution to debit or credit an account. Electronic funds transfers shall be accomplished by an automated clearinghouse debit, an automated clearinghouse credit, or by Federal Reserve Wire Transfer (Fedwire).

(b) “Automated clearinghouse” means any federal reserve bank, or an organization established in agreement with the National Automated Clearing House Association, that operates as a clearinghouse for transmitting or receiving entries between banks or bank accounts and which authorizes an electronic transfer of funds between these banks or bank accounts.

(c) “Automated clearinghouse debit” means a transaction in which the state, through its designated depository bank, originates an automated clearinghouse transaction debiting the person’s bank account and crediting the state’s bank account for the amount of tax. Banking costs incurred for the automated clearinghouse debit transaction shall be paid by the state.

(d) “Automated clearinghouse credit” means an automated clearinghouse transaction in which the person, through his or her own bank, originates an entry crediting the state’s bank account and debiting his or her own bank account. Banking costs incurred for the automated clearinghouse credit transaction charged to the state shall be paid by the person originating the credit.

(e) “Fedwire transfer” means any transaction originated by a person and utilizing the national electronic payment system to transfer funds through the federal reserve banks, when that person debits his or her own bank account and credits the state’s bank account. Electronic funds transfers pursuant to Section 7659.9 may be made by Fedwire only if payment cannot, for good cause, be made according to subdivision (a), and the use of Fedwire is preapproved by the board. Banking costs incurred for the Fedwire transaction charged to the person and to the state shall be paid by the person originating the transaction.

7659.93. Electronic filing. (a) Any return, report, declaration statement, or other document required to be made under this part that is filed using electronic media shall be filed and authenticated pursuant to any method or form the board may prescribe.

(b) Notwithstanding any other law, any return, report, declaration, statement, or other document otherwise required to be signed that is filed by the taxpayer using electronic media in a form as required by the board shall be deemed to be a signed, valid original document, including upon reproduction to paper form by the board.

(c) Electronic media includes, but is not limited to, computer modem, magnetic media, optical disk, facsimile machine, or telephone.

(d) Upon written approval of the board, a person may satisfy the requirements of subdivision (a) by executing and providing to the board a consent and authorization for the Internal Revenue Service to provide to the board under Section 6103 of the Internal Revenue Code, the return filed by the person under Section 48.4101-2 of Title 26 of the Code of Federal Regulations. The board, in its sole discretion, may rescind its approval and require a person to file reports as specified in subdivision (a).

History.—Added by Stats. 2001, Ch. 429 (AB 309), operative January 1, 2002.

Article 3. Determination If No Return Made

- § 7660. Determination if no return made; penalty.
- § 7661. Interest on determination.
- § 7662. Penalty in case of fraud.
- § 7663. Notice of determination.

7660. Determination if no return made; penalty. If any supplier fails, neglects, or refuses to file the return within the time prescribed by this chapter, the board shall estimate the motor vehicle fuel removals, entries or sales for the period for which he or she made no return within the time required. Upon the basis of this estimate the board shall determine the tax due from the supplier, and shall add to the tax a penalty of 10 percent thereof. The board may make a determination for more than one period and may make one or more determinations for the same period.

7661. Interest on determination. All determinations so made, exclusive of penalties, shall bear interest at the modified adjusted rate per month, or fraction thereof, established pursuant to Section 6591.5, from the last day of the month after the close of the monthly period for which the amount or any portion thereof should have been returned until the date of payment.

7662. Penalty in case of fraud. If the neglect or refusal of a supplier to file a return is due to fraud or intent to evade the tax, a penalty of 25 percent of the tax shall be added thereto in addition to the 10 percent penalty provided in Section 7660.

7663. Notice of determination. Promptly after making its determination the board shall give to the delinquent supplier written notice of the estimate, tax, and penalty, the notice shall be given in the manner prescribed in Section 7671 for giving notice of a deficiency determination.

Article 4. Deficiency Determinations

- § 7670. Basis of deficiency determination.
- § 7671. Notice of determination.
- § 7672. Deficiency determination penalty.
- § 7673. Fraudulent deficiency determination penalty.
- § 7674. Deficiency determination interest.
- § 7675. Deficiency determination statute of limitation.
- § 7675.1. Limitation; deficiency determination; decedent.
- § 7676. Extension of statutory period by agreement.

7670. Basis of deficiency determination. If the board is not satisfied with the return made by any supplier, it may make a deficiency determination of the tax required to be paid by the supplier based upon information contained in the return or upon any information in the possession of the board. The board may make a determination for more than one period and may make one or more determinations for the same period. When a business is discontinued a determination may be made at any time thereafter, within the period specified in Section 7675, as to liability arising out of that business, irrespective of whether the determination is issued prior to the due date of the liability as otherwise specified in this part.

7671. Notice of determination. The board shall give the supplier written notice of its determination. The notice shall be placed in a sealed envelope, with postage paid, addressed to the supplier at the supplier's address as it appears in the records of the board. The giving of notice shall be deemed complete at the time of the deposit of the notice in the United States Post Office, or a mailbox, subpost office, substation or mail chute or other facility maintained or provided by the United States Postal Service, without extension of time for any reason. In lieu of mailing, a notice may be served personally by delivering to the person to be served and service shall be deemed complete at the time of that delivery. Personal service to a corporation may be made by delivery of a notice to any person designated in the Code of Civil Procedure to be served for the corporation with summons and complaint in a civil action.

7672. Deficiency determination penalty. If any part of the deficiency for which a deficiency determination is made is due to neglect or intentional disregard of this part or authorized rules and regulations, a penalty of 10 percent of the amount of the determination shall be added thereto.

7673. Fraudulent deficiency determination penalty. If any part of the deficiency for which a deficiency determination is made is due to fraud or an intent to evade the tax, a penalty of 25 percent of the amount of the determination shall be added thereto.

7674. Deficiency determination interest. All deficiency determinations, exclusive of penalty, shall bear interest at the modified adjusted rate per month, or fraction thereof, established pursuant to Section 6591.5, from the last day of the month following the close of the monthly period for which the amount or any portion thereof should have been returned until the date of payment.

7675. Deficiency determination statute of limitation. Except in the case of fraud, intent to evade this part or authorized rules and regulations, or failure to make a return, every notice of a deficiency determination shall be given to the supplier within three years after the last day of the month following the monthly period for which the amount is proposed to be determined or within three years after the return is filed, whichever period expires the later. In the case of a failure to make a return the notice of determination shall be mailed within eight years after the date the return was due.

7675.1. Limitation; deficiency determination; decedent. In the case of a deficiency arising under this part during the lifetime of a decedent, a notice of deficiency determination shall be mailed within four months after written request therefor, in the form required by the board, by the fiduciary of the estate or trust or by any other person liable for the tax or any portion thereof.

7676. Extension of statutory period by agreement. If, before the expiration of the time prescribed in Section 7675 for the mailing of a notice of deficiency determination, the taxpayer has consented in writing to the mailing of the notice after that time, the notice may be mailed at any time prior to the expiration of the period agreed upon. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon.

Article 5. Jeopardy Determinations and Weekly Payments

- § 7698. Jeopardy determinations.
- § 7699. Determination final unless petition for redetermination filed.
- § 7700. Petition for redetermination; Security.
- § 7700.5. Administrative hearing.
- § 7701. Weekly payment requirements.
- § 7702. Monthly return; additional requirement.
- § 7703. Revocation of license.
- § 7704. Special jeopardy determination; Collection.
- § 7705. Penalty for nonpayment; Expiration date.
- § 7706. Interest.
- § 7707. Service of notice.

7698. Jeopardy determinations. If the board believes that the collection of any amount of tax imposed under this part will be jeopardized by delay, it shall thereupon make a determination of the amount of tax, noting that fact upon the determination. The amount determined is immediately due and payable.

7699. Determination final unless petition for redetermination filed. If the amount of the tax, interest, and penalty specified in the jeopardy determination is not paid within 10 days after service upon the supplier of notice of the determination, the determination becomes final, unless a petition for redetermination is filed within the 10 days, and the delinquency penalty and interest provided in Article 6 (commencing with Section 7710) shall attach to the amount specified.

7700. Petition for redetermination; security. The supplier against whom a jeopardy determination is made may petition for the redetermination thereof pursuant to Article 6 (commencing with Section 7710). He or she shall, however, file the petition for redetermination with the board within 10 days after the service upon him or her of notice of the determination. At the time of filing the petition for redetermination, the supplier shall deposit with the board such security as it may deem necessary to ensure compliance with this part.

7700.5. Administrative hearing. In accordance with these rules and regulations as the board may prescribe, the person against whom a jeopardy determination is made may apply for an administrative hearing for one or more of the following purposes:

(a) To establish that the determination is excessive.

(b) To establish that the sale of property that may be seized after issuance of the jeopardy determination or any part thereof shall be delayed pending the administrative hearing because the sale would result in irreparable injury to the person.

(c) To request the release of all or a part of the property to the person.

(d) To request a stay of collection activities. The application shall be filed within 30 days after service of the notice of jeopardy determination and shall be in writing and state the specific factual and legal grounds upon which it is founded. No security need be posted to file the application and to obtain this hearing. However, if the person does not deposit within the 10-day period prescribed in Section 7700, such security as the board may deem necessary to ensure compliance with this part, the filing of the application shall not operate as a stay of collection activities, except sale of property seized after issuance of the jeopardy determination. Upon a showing of good cause for failure to file a timely application for administrative hearing, the board may allow a filing of the application and grant the person an administrative hearing. The filing of an application pursuant to this section shall not affect provisions of Section 7699 relating to the finality date of the determination or to penalty or interest.

7701. Weekly payment requirements. If the board deems the procedure necessary in order to insure payment to the state of the amount of taxes due from any supplier under this part, it may require the supplier to make returns and payments of taxes on a weekly basis. The supplier must then file a return each Tuesday showing the total number of gallons of motor vehicle fuel removed, entered, or sold by the supplier during the week ending the Saturday next preceding, the amount of tax due for that week and such other information as the board deems necessary for the proper administration of this article. The return shall be accompanied by a remittance payable to the Controller for the amount of tax due for the period covered.

7702. Monthly return; additional requirement. A supplier required to make weekly payments is not relieved of the duty of filing the verified monthly return required by Article 1 (commencing with Section 7651).

7703. Revocation of license. Whenever any supplier who is required to pay tax in weekly installments as provided by Section 7701 fails to make a weekly return or to pay the full amount in accordance with the terms and conditions prescribed by the board, the supplier's license may be revoked forthwith.

7704. Special jeopardy determination; collection. If a supplier fails to make the supplier's weekly return or to pay any weekly installment of the tax, or any part thereof, pursuant to the requirement imposed upon the supplier under Section 7701, the full amount of the installment becomes immediately due and payable. The board shall thereupon make a jeopardy determination under Section 7698 and the Controller and the Attorney General shall forthwith collect the tax due from the supplier in the manner prescribed by Chapters 5 (commencing with Section 7651) and 6 (commencing with Section 7851). All provisions of those chapters, where relevant, apply to collections required to be made under this article.

7705. Penalty for nonpayment; expiration date. If any supplier fails to pay any weekly installment of tax shown to be due by the supplier's return on the Tuesday when required to be paid, a penalty of 5 percent shall be added thereto. In addition, if any weekly installment of tax remains unpaid on the last day of the month following the month during which the last of the removals, entries for sales occurred on which the weekly installment was levied, a penalty of 10 percent of the installment, exclusive of penalties, shall be added thereto. The weekly installment shall be deemed not paid or unpaid on any particular day:

(a) If not paid prior to 5 p.m. of that day, when paid in person.

(b) If the envelope in which the remittance is enclosed bears a post office cancellation mark dated later than that day, when paid by mail.

7706. Interest. All jeopardy determinations including those made under Section 7704, exclusive of penalty, shall bear interest at the modified adjusted rate per month, or fraction thereof, established pursuant to Section 6591.5, from the last day of the month following the close of the monthly period for which the amount or any portion thereof should have been returned until the date of payment.

7707. Service of notice. Any notice required by this article shall be given in the manner prescribed in Section 7671 for giving notice of a deficiency determination.

Article 6. Redeterminations

- § 7710. Petition for redetermination.
- § 7710.5. Form and content.
- § 7711. Redetermination decision final.
- § 7711.5. Changing amount of determination.
- § 7712. Decision, final date of.
- § 7713. Final determination penalty.
- § 7714. Offsets.
- § 7715. Deposit of funds.
- § 7716. Notice to Controller.

7710. Petition for redetermination. Any supplier against whom a determination is made by the board under Article 3 (commencing with Section 7660) and Article 4 (commencing with Section 7670) may petition for a redetermination within 30 days after the date the notice thereof is given to him. If a petition for redetermination is not filed within the 30-day period, the determination becomes final at the expiration of the period.

7710.5. Form and content. Every petition for redetermination shall be in writing and shall state the specific grounds upon which the petition is founded. The petition may be amended to state additional grounds at any time prior to the date on which the board issues its order or decision upon the petition for the redetermination.

7711. Redetermination decision final. If a petition for redetermination is filed within the 30-day period, the board shall reconsider the determination and, if the supplier has so requested in his or her petition shall grant him or her an oral hearing and shall give him or her 10 days notice of the time and place of the hearing. Service of notice shall be as prescribed by Section 7671. The board may continue the hearing from time to time as may be necessary.

7711.5. Changing amount of determination. The board may decrease or increase the amount of the determination before it becomes final, but the amount may be increased only if a claim for the increase is asserted by the board at or before the hearing. Unless the penalty imposed by Section 7662, Section 7673, or Section 7726 applies to the amount of the determination as originally made or as increased, the claim for increase must be asserted within eight years after the date the return for the period for which the increase is asserted was due.

7712. Decision, final date of. The order or decision of the board upon a petition for redetermination becomes final 30 days after the giving of notice thereof to the supplier as prescribed by Section 7671.

7713. Final determination penalty. All determinations made by the board under this chapter are due and payable at the time they become final. If they are not paid when due and payable, a penalty of 10 percent of the amount of the determination, exclusive of interest and penalties, shall be added thereto. Payments shall be made in the form of a remittance payable to

the Controller and shall be filed with the board together with a copy of the notice of determination which the board shall furnish to the supplier for that purpose.

7714. Offsets. In making a determination the board may offset overpayments for a period or periods, together with interest on the overpayments, against underpayments for another period or periods, against penalties, and against the interest on the underpayments. The interest on the underpayments and overpayments shall be computed in the manner set forth in Sections 7674 and 8130.

7715. Deposit of funds. All payments received by the board from suppliers under this part shall be deposited by the board for the Controller in the State Treasury and appropriate advices of those payments shall be transmitted to the Controller by the board.

7716. Notice to Controller. The board shall notify the Controller of any and all determinations made pursuant to this chapter as well as the amounts self-determined under this part, and the Controller shall keep an appropriate record of all such matters.

Article 7. Payments by Unlicensed Persons

- § 7726. Immediate liability for tax.
- § 7727. Immediate liability for backup tax.
- § 7728. Jeopardy determination collection.
- § 7729. Court action.
- § 7730. Prima facie evidence.
- § 7731. Cumulative remedies.
- § 7732. Penal action.

7726. Immediate liability for tax. (a) If any person becomes a supplier without first securing a license, the tax, applicable penalties and interest, if any, become immediately due and payable on account of all motor vehicle fuel removed, sold, or entered by the supplier.

(b) The board shall forthwith ascertain as best it may the amount of motor vehicle fuel removed, sold, or entered and shall determine immediately the tax on the amount, adding to the tax a penalty of 25 percent of the amount of the tax, and shall give the unlicensed supplier notice of this determination as prescribed by Section 7671; provided, however, that where the board determines that failure to secure a license was due to reasonable cause, the penalty may be waived. The provisions of Sections 7699 and 7700 shall be applicable with respect to the finality of the determination and the right of the unlicensed supplier to petition for a redetermination.

7727. Immediate liability for backup tax. (a) The backup tax imposed under Section 7364 and any applicable penalties and interest shall be immediately due and payable.

The board shall forthwith ascertain as best it may the amount of motor vehicle fuel sold, or delivered into the fuel tank of a motor vehicle fuel-powered highway vehicle, or sold and delivered into the fuel tank of a motor

vehicle fuel-powered highway vehicle, and shall determine immediately the tax on the amount and shall give the highway vehicle operator/fueler notice of this determination as prescribed by Section 7671. The determination shall include interest at the modified adjusted rate per month, or fraction thereof, established pursuant to Section 6591.5, from the last day of the month following the date the backup tax applies until the date of remittance to the state. The provisions of Sections 7699 and 7700 shall be applicable with respect to the finality of the determination and the right of the highway vehicle operator/fueler to petition for a redetermination.

(b) A penalty of 25 percent of the amount of tax or five hundred dollars (\$500), whichever is greater, shall be added to the tax.

(c) If both the penalty specified in this section and in Section 7405 are otherwise applicable, only the penalty totaling the greatest amount shall be imposed, and, the penalty specified in this section shall be imposed only if the amount of penalty exceeds any other applicable penalty.

(d) Where the board determines that the sale, delivery into the fuel tank of a motor vehicle fuel-powered highway vehicle, or sale and delivery into the fuel tank of a motor vehicle fuel-powered highway vehicle of untaxed motor vehicle fuel was due to reasonable cause and circumstances beyond the person's control, may be relieved of the penalty. A person seeking to be relieved of the penalty shall file with the board a statement under penalty of perjury setting forth the facts upon which the request for relief is based.

(e) All administrative provisions contained in this part that apply to a supplier shall also be applicable to a highway vehicle operator/fueler.

7728. Jeopardy determination collection. The board shall file a copy of this jeopardy determination with the Controller who shall forthwith collect the tax, penalty, and interest due from the unlicensed supplier by seizure and sale of property in the manner prescribed for the collection of a delinquent monthly tax.

7729. Court action. At the request of the Controller, the Attorney General shall commence and prosecute to final determination an action at law to collect the tax, penalty, and interest, or any part thereof, determined against an unlicensed supplier.

7730. Prima facie evidence. In the suit, a copy of the jeopardy determination certified by the secretary of the board or by the Controller, shall be prima facie evidence that the unlicensed supplier is indebted to the state in the amount of the tax, penalties, and interest computed as prescribed by Section 7706.

7731. Cumulative remedies. The foregoing remedies of the state are cumulative.

7732. Penal action. No action taken pursuant to this article relieves the unlicensed supplier or a highway vehicle operator/fueler in any manner from the penal provisions of this part.

CHAPTER 6. COLLECTION OF TAX

- Article 1. Security for Tax. §§ 7851-7855.
1.5. Suit for Tax. §§ 7861-7865.
2. Lien of Tax. § 7872.
2.5. Warrant for Collection of Tax. §§ 7881-7884.
3. Seizure and Sale. §§ 7891-7895.
4. Collection of Tax from Deposited Security. § 7916.
5. Sale of State-Acquired Property. §§ 7931-7935.
6. Payment on Termination of Business. §§ 7956-7959.
7. Miscellaneous Provisions. §§ 7982-7983.

Article 1. Security for Tax

- § 7851. Notice of delinquency to creditors.
§ 7852. Nontransfer of credits.
§ 7853. Report of credits to Controller.
§ 7854. Liability for transfer after notice.
§ 7855. Notice of levy.

7851. Notice of delinquency to creditors. If any supplier is delinquent in the payment of his or her tax, or in the event a determination has been made against him or her which remains unpaid, the Controller may, not later than 10 years after the payment became delinquent, or within 10 years after the last recording or filing of a notice of state tax lien under Section 7171 of the Government Code, give notice thereof personally or by first-class mail to all persons, including any officer or department of the state or any political subdivision or agency of the state, having in their possession or under their control any credits or other personal property belonging to the supplier, or owing any debts to the supplier. In the case of any state officer, department or agency, the notice shall be given to such officer, department or agency prior to the time it presents the claim of the delinquent taxpayer to the Controller.

History.—Stats. 1963, p. 1808, in effect September 20, 1963, added references to determinations which remain unpaid, and three year statute of limitations. Also added last sentence. Stats. 1977, Ch. 481, operative July 1, 1978, changed statute of limitation from “three” years to “10” years; and substituted “or filing of a notice of state tax lien” for “of a certificate”. Stats. 1978, Ch. 827, effective January 1, 1979, substituted “first-class” for “registered”. Stats. 1980, Ch. 600, operative January 1, 1981, substituted “Section 7171 of the Government Code” for “Section 7872”. Stats. 2000, Ch. 1053 (AB 2114), operative January 1, 2002, substituted “supplier” for “distributor” after “If any”, “property belonging to the” and “any debts to the” and substituted “or her” for “license”, and added “or her” after “determination has been made against him” in the first sentence; added “State” after “delinquent taxpayer to the” in the second sentence.

7852. Nontransfer of credits. After receiving the notice the persons so notified shall neither transfer nor make other disposition of the credits, other personal property, or debts in their possession or under their control at the time they receive the notice until the Controller consents to a transfer or disposition or until 60 days elapse after the receipt of the notice, whichever period expires the earlier.

History.—Stats. 1959, p. 2469, in effect September 18, 1959, substituted “60” for “20.” Stats. 1963, p. 1808, in effect September 20, 1963, added the phrase “whichever period expires the earlier”.

7853. Report of credits to Controller. All persons so notified shall forthwith after receipt of the notice advise the Controller of all credits, other personal property, or debts in their possession, under their control, or owing by them. If such notice seeks to prevent the transfer or other disposition of a deposit in a bank or other credits or personal property in the possession or

under the control of a bank, the notice to be effective shall state the amount, interest and penalty due from the person and shall be delivered or mailed to the branch or office of such bank at which such deposit is carried or at which such credits or personal property is held. Notwithstanding any other provision, with respect to a deposit in a bank or other credits or personal property in the possession or under the control of a bank, the notice shall only be effective with respect to an amount not in excess of two times the amount, interest and penalty due from the person.

History.—Stats. 1963, p. 1808, in effect September 20, 1963, substituted “forthwith” for “within five days”, and added the second sentence. Stats. 1972, Ch. 103, operative April 1, 1973, added “shall state the amount, interest and penalty due from the person and”, and added the third sentence.

7854. Liability for transfer after notice. If, during the effective period of the notice to withhold, any person so notified makes any transfer or disposition of the property or debts required to be withheld, to the extent of the value of the property or the amount of the debts thus transferred or paid, he shall be liable to the State for any indebtedness due under this part from the person with respect to whose obligation the notice was given if solely by reason of such transfer or disposition the State is unable to recover the indebtedness of the person with respect to whose obligation the notice was given.

History.—Added by Stats. 1963, p. 1809, in effect September 20, 1963.

7855. Notice of levy. (a) The Controller may, by notice of levy served personally or by first-class mail, require all persons having in their possession, or under their control, any payments, credits other than payments, or personal property belonging to a supplier or other person liable for any amount under this part to withhold from these credits or other personal property the amount of any tax, interest, or penalties due from the supplier or other person, or the amount of any liability incurred by them under this part, and to transmit the amount withheld to the Controller at the time it may designate. The notice of levy shall have the same effect as a levy pursuant to a writ of execution except for the continuing effect of the levy, as provided in subdivision (b).

(b) The person served shall continue to withhold pursuant to the notice of levy until the amount specified in the notice, including accrued interest, has been paid in full, until the notice is withdrawn, or until one year from the date the notice is received, whichever occurs first.

(c) The amount required to be withheld is the lesser of the following:

(1) The amount due stated on the notice. (2) The sum of both of the following:

(A) The amount of the payments, credits other than payments, or personal property described above and under the person’s possession or control when the notice of levy is served on the person.

(B) The amount of each payment that becomes due following service of the notice of levy on the person and prior to the expiration of the levy.

(d) For the purposes of this section, the term “payments” does not include earnings as that term is defined in subdivision (a) of Section 706.011 of the

Code of Civil Procedure or funds in a deposit account as defined in paragraph (29) of subdivision (a) of Section 9102 of the Commercial Code. The term “payments” does include any of the following:

(1) Payments due for services of independent contractors, dividends, rents, royalties, residuals, patent rights, or mineral or other natural rights.

(2) Payments or credits due or becoming due periodically as a result of an enforceable obligation to the supplier or other person liable for the tax.

(3) Any other payments or credits due or becoming due the supplier or other person liable as the result of written or oral contracts for services or sales whether denominated as wages, salary, commission, bonus, or otherwise.

(e) In the case of a financial institution, to be effective, the notice shall state the amount due from the taxpayer and shall be delivered or mailed to the branch or office of the financial institution where the credits or other property is held, unless another branch or office is designated by the financial institution to receive the notice.

History.—Added by Stats. 1982, Ch. 1589, in effect January 1, 1983. Stats. 1993, Ch. 1113, in effect January 1, 1994, added “(a)”, added a comma after “may”, deleted a comma after “levy” substituted “these” for “such” before “credit”, substituted “the” for “such” after “due from”, and substituted “the” for “such” before “times” in the first paragraph; added “(b)”; and added subdivision (c). Stats. 1998, Ch. 609 (SB 2232), in effect January 1, 1999, substituted “payments, credits, other than payments,” for “credit” after “their control, any” and substituted “time” for “times as” after “Controller at the” in the first sentence and added “The notice of in subdivision (b).” as the second sentence of subdivision (a); relettered subdivision (b) as (e) and relettered subdivision (c) as (b); and added subdivisions (c) and (d). Stats. 1999, Ch. 991 (SB 45), in effect January 1, 2000, but operative July 1, 2001, substituted “paragraph (29) of subdivision (a) of Section 9102” for “Section 9105” after “as defined in” in subdivision (d). Stats. 2000, Ch. 1053 (AB 2114), operative January 1, 2002, substituted “supplier” for “distributor” after “property belonging to a” and “penalties due from the” in the first sentence of subdivision (a), and substituted “supplier” for “distributor” after “enforceable obligation to the” in subdivision (d) paragraph (2), and substituted “supplier” for “distributor” after “or becoming due the” in subdivision (d) paragraph (3).

Article 1.5. Suit for Tax

- § 7861. Request by Controller.
- § 7862. Duty of Attorney General.
- § 7863. Partial payment no bar to action.
- § 7864. Attachment.
- § 7865. Certificate; prima facie evidence.

7861. Request by Controller. The Controller may request the Attorney General to bring suit for the recovery of any unpaid tax, interest, penalties, and costs.

History.—Added by Stats. 1959, p. 2470, in effect September 18, 1959. Stats. 2000, Ch. 1053 (AB 2114), operative January 1, 2002, deleted “license” after “recovery of any unpaid”.

7862. Duty of Attorney General. The Attorney General shall bring suit for any amount due and costs on the written request of the Controller and in the name of the people of the State of California in a court of competent jurisdiction in the County of Sacramento.

History.—Added by Stats. 1959, p. 2470, in effect September 18, 1959.

7863. Partial payment no bar to action. Payment of an amount to the board for and on account of the tax and the acceptance thereof does not bar an action by the state to recover any additional amount which is actually due.

History.—Added by Stats. 1959, p. 2470, in effect September 18, 1959. Stats. 2000, Ch. 1053 (AB 2114), operative January 1, 2002, deleted “license” after “on account of the” and substituted “state” for “State”.

7864. Attachment. In the action a writ of attachment may be issued in the manner provided by Chapter 5 (commencing with Section 485.010) of Title 6.5 of Part 2 of the Code of Civil Procedure without the showing required by Section 485.010 of the Code of Civil Procedure.

History.—Stats. 1974, Ch. 1516, effective January 1, 1975, deleted the statement that no bond or affidavit was required previous to the issuing of the attachment, and added the proviso that the writ of attachment may be issued in the described manner.

7865. Certificate; prima facie evidence. In the action a certificate issued by the board showing unpaid taxes determined against any supplier shall be prima facie evidence of all of the following:

(a) The determination of the tax, the delinquency thereof, and the amount of the tax, interest, penalties, and costs due and unpaid to the state.

(b) The indebtedness of the supplier to the state in the amount of the tax, interest, and penalties therein appearing unpaid.

(c) The full compliance by all persons required to perform administrative duties under this part with all the forms of law in relation to the determination and levy of the tax.

History.—Added by Stats. 1959, p. 2470, in effect September 18, 1959. Stats. 2000, Ch. 1053 (AB 2114), operative January 1, 2002, deleted “license” after “board showing unpaid” and substituted “supplier” for “distributor” after “determined against any” in the first paragraph, deleted “license” after “The determination of the” and “the amount of the” and substituted “state” for “State” after “unpaid to the” in subdivision (a), substituted “supplier to the state” for “distributor to the State” after “The indebtedness of the” and deleted “license” after “in the amount of the” in subdivision (b), and deleted “license” after “and levy of the” in subdivision (c).

Bankruptcy proceeding.—A verified claim on information and belief filed in a bankruptcy proceeding supported only by evidence that the bankrupt broker sold more gasoline than he purchased tax-paid from distributors with whom he was known to have dealt is insufficient to establish the claim. *Controller of California v. Lockwood*. (1951) 193 Fed. 2d 169.

Article 2. Lien of Tax

- § 7871. Lien; priority of. [Repealed.]
- § 7872. Recording certificate; lien. [Repealed.]
- § 7872. Liens; perfection and enforceability of.
- § 7873. Release of lien. [Repealed.]
- § 7873.5. Unenforceable lien. [Repealed.]

7871. Lien; priority of. [Repealed, Stats. 1977, Ch. 481, operative July 1, 1978.]

7872. Recording certificate; lien. [Repealed, Stats. 1977, Ch. 481, operative July 1, 1978.]

7872. Liens; perfection and enforceability of. (a) If any person fails to pay any amount imposed under this part at the time that it becomes due and payable, the amount thereof, including penalties and interest, together with any costs in addition thereto, shall thereupon be a perfected and enforceable state tax lien. Such a lien is subject to Chapter 14 (commencing with Section 7150) of Division 7 of Title 1 of the Government Code.

(b) For the purpose of this section, amounts are “due and payable” on the following dates:

(1) For amounts disclosed on a return received by the board before the date the return is delinquent, the date the return would have been delinquent;

(2) For amounts disclosed on a return filed on or after the date the return is delinquent, the date the return is received by the board;

(3) For amounts determined under Section 7698 (pertaining to jeopardy assessments), the date the notice of the board's finding is mailed or issued;

(4) For all other amounts, the date the assessment is final.

History.—Added by Stats. 1977, Ch. 481, operative July 1, 1978. Stats. 1979, Ch. 322, effective January 1, 1980, changed wording of second paragraph of (a), deleted reference to judgment creditors following second sentence of (f), changed "January 1, 1978" to "July 1, 1978" in (g). Stats. 1980, Ch. 600, operative January 1, 1981, deleted part of first sentence in (a) following "lien"; substituted present second sentence for former second sentence; renumbered second paragraph of (a) to become (b); substituted "board" for "Controller" in (b)(1), (b)(2), (b)(3); deleted former (b), (c), (d), (e), (f), (g).

7873. Release of lien. [Repealed by Stats. 1980, Ch. 600, operative January 1, 1981.]

7873.5. Unenforceable lien. [Repealed by Stats. 1980, Ch. 600, operative January 1, 1981.]

Article 2.5. Warrant for Collection of Tax

- § 7881. Issuance—limitations.
- § 7882. Effect.
- § 7883. Fees and expenses.
- § 7884. Liability for expenses.

7881. Issuance—limitations. At any time within three years after any person is delinquent in the payment of any amount herein required to be paid or within 10 years after the last recording or filing of a notice of state tax lien under Section 7171 of the Government Code, the Controller or his authorized representative may issue a warrant for the enforcement of any liens and for the collection of any amount required to be paid to the state under this part.

History.—Added by Stats. 1959, p. 2470, in effect September 18, 1959. Stats. 1965, p. 2046, in effect September 17, 1965, revised section to provide for periods of limitations. Stats. 1977, Ch. 481, operative July 1, 1978, deleted "of a certificate" and substituted "or filing of a notice of state tax lien". Stats. 1980, Ch. 600, operative January 1, 1981, substituted "Section 7171 of the Government Code," for "Section 7872".

7882. Effect. The warrant shall be directed to any sheriff or marshal and shall have the same force and effect as a writ of execution. The warrant shall be levied and sale made pursuant to it in the same manner and with the same force and effect as a levy of and sale pursuant to a writ of execution.

History.—Added by Stats. 1959, p. 2470, in effect September 18, 1959. Stats. 1996, Ch. 872, in effect January 1, 1997, deleted ", constable," after "to any sheriff" in the first sentence.

7883. Fees and expenses. The Controller may pay or advance to the sheriff or marshal, the same fees, commissions, and expenses for his or her services as are provided by law for similar services pursuant to a writ of execution. The Controller, and not the court, shall approve the fees for publication in a newspaper.

History.—Added by Stats. 1959, p. 2470, in effect September 18, 1959. Stats. 1996, Ch. 872, in effect January 1, 1996, substituted "or marshal" for " , marshal or constable" after "to the sheriff" and added "or her" after "expenses for his" in the first sentence.

7884. Liability for expenses. The fees, commissions, and expenses are the obligation of the person required to pay any amount under this part and may be collected from him by virtue of the warrant or in any other manner provided in this part for the collection of the tax.

History.—Added by Stats. 1959, p. 2470, in effect September 18, 1959.

Article 3. Seizure and Sale

- § 7891. Seizure and sale by Controller.
- § 7892. Notice of sale.
- § 7893. Sale of property.
- § 7894. Controller may bid.
- § 7895. Disposition of proceeds.

7891. Seizure and sale by Controller. Whenever any supplier is delinquent in the payment of the tax, the Controller or his or her authorized representative may forthwith collect the tax due in the following manner: The Controller shall seize any property, real or personal, of the supplier, and thereafter sell the property, or a sufficient part of it, at public auction to pay the tax due together with any penalties, interest and any costs incurred on account of the seizure and sale.

History.—Stats. 1943, p. 2702, operative July 1, 1943, added reference to interest. Stats. 2000, Ch. 1053 (AB 2114), operative January 1, 2002, substituted “supplier” for “distributor” after “Whenever any” and “real or personal, of the”, deleted “license” after “the payment of the”, “may forthwith collect the” and “at public auction to pay the”.

7892. Notice of sale. Notice of the sale and the time and place thereof shall be given to the delinquent supplier and to all persons who have an interest of record in the property in writing at least 20 days before the date set for the sale in the following manner: The notice shall be personally served or enclosed in an envelope addressed to the supplier or other person at his or her last known residence or place of business in this state. If not personally served, the notice shall be deposited in the United States mail, postage prepaid. The notice shall be published pursuant to Section 6063 of the Government Code, in a newspaper of general circulation published in the city in which the property or a part thereof is situated if any part thereof is situated in a city or, if not, in a newspaper of general circulation published in the county in which the property or a part thereof is located. Notice shall also be posted in both of the following manners:

(a) One public place in the city in which the interest in property is to be sold if it is to be sold in a city or, if not to be sold in a city, one public place in the county in which the interest in the property is to be sold.

(b) One conspicuous place on the property.

The notice shall contain a description of the property to be sold, a statement of the amount of the taxes, penalties, interest, and costs, the name of the supplier, and the further statement that unless the taxes, penalties, interest, and costs are paid on or before the time fixed in the notice for the sale, the property, or so much of it as may be necessary, will be sold in accordance with law and the notice.

History.—Stats. 1943, p. 2702, operative July 1, 1943, added references to interest in last sentence. Stats. 1990, Ch. 1528, in effect January 1, 1991, added “and to all persons . . . property” after “delinquent distributor”, substituted “20” for “10”, added “in the following manner:” after “sale”, deleted period after “sale”, added “personally served or” after “The notice shall be”, added “or other person” after “distributor”, “or her” after “his”, substituted “state.” for “State” in the first sentence, substituted “If not . . . notice” for “and” before “shall” in the second sentence, deleted “also” after “shall”, substituted “pursuant to . . . Code,” for “for at least 10 days before the date set for the sale”, substituted “city” for “county” and “or a part thereof is situated . . . part thereof is located” for “seized is to be sold” in the third sentence, deleted the former fourth sentence which provided, “If there is no newspaper of general circulation in the county, notice shall be posted in three public places in the county 10 days prior to the date set for the sale” and added the sentence “Notice shall also be posted . . .”, in the first paragraph, created the second paragraph from the former last sentence of the first paragraph, inserted a comma after “interest” and substituted “interest,” for “interests”. Stats. 2000, Ch. 1053 (AB 2114), operative January 1, 2002, substituted “supplier” for “distributor” after “given to the delinquent” and “envelope addressed to the” in the first sentence in the first paragraph, and substituted “supplier” for “distributor” after “the name of the” in the second sentence of paragraph (b).

7893. Sale of property. At the sale the Controller or his or her authorized agent shall sell the property in accordance with law and the notice and shall deliver to the purchaser a bill of sale for the personal property and a deed for any real property sold. The bill of sale or deed vests title in the purchaser. The unsold portion of any property seized may be left at the place of sale at the risk of the supplier.

History.—Stats. 2000, Ch. 1053 (AB 2114), operative January 1, 2002, added “or her” after “Controller or his” in the first sentence and substituted “supplier” for “distributor” after “sale at the risk of the” in the third sentence.

7894. Controller may bid. The Controller may bid at the sale.

7895. Disposition of proceeds. If upon the sale the moneys received exceed the amount of all taxes, penalties, interest, and costs due the state from the supplier, the Controller shall return the excess to the supplier and obtain a receipt. If for any reason the receipt of the supplier is not available, the Controller shall deposit the excess moneys in an unclaimed property account, in trust for the supplier, subject to the order of the supplier, the supplier’s heirs, successors, or assigns.

History.—Stats. 1943, p. 2703, operative July 1, 1943, added reference to interest. Stats. 1996, Ch. 860, in effect January 1, 1997, substituted “state” for “State” after “costs due the” and added “or her” after “and obtain his” in the first sentence, substituted “in an unclaimed property account, in trust” for “with the State Treasurer, as trustee” after “the excess moneys” and added “or her” after “distributor, his” in the second sentence. Stats. 2000, Ch. 1051 (AB 2114), operative January 1, 2002, deleted “license” after “exceed the amount of all”, substituted “supplier” with “distributor” after “due the state from the” and “shall return the excess to the”, and substituted “a” for “his or her” after “and obtain” in the first sentence, substituted “supplier” for “distributor” after “reason the receipt of the” and “in trust for the” and substituted “supplier, the supplier’s” for “distributor, his or her” after “subject to the order of the” in the second sentence.

Article 4. Collection of Tax from Deposited Security

§ 7916. Collection from deposited security.

7916. Collection from deposited security. Upon receipt of a certificate of the Controller setting forth the amount of a taxpayer’s delinquencies, the board shall pay to the Controller the amount so certified from the money deposited with the board by the taxpayer or from the amounts received from the sale of bonds or other obligations deposited with the board by the taxpayer. Securities deposited with the board which have a prevailing market price may be sold by the board for the purposes of this section at private sale at a price not lower than the prevailing market price thereof.

History.—Stats. 1959, p. 2471, in effect September 18, 1959, completely revised section which formerly provided for a suit to effect bond forfeiture. Stats. 1987, Ch. 38, in effect January 1, 1988, deleted all references to the State Treasurer and substituted the board.

Right to exemption.—In an action under this section as it read prior to 1959 to collect the tax no exemption or deduction may be recognized that was not claimed in the distributor’s report. *People v. Sterling Refining Co.*, (1927) 86 Cal.App. 558.

Article 5. Sale of State-Acquired Property

- § 7931. Sale of State-acquired property by Controller.
- § 7932. Publication of notice of sale.
- § 7933. Sale of property.
- § 7934. Distribution of proceeds.
- § 7935. Title of purchaser.

7931. Sale of State-acquired property by Controller. Whenever the state acquires any real or personal property seized and sold for delinquent

taxes of the supplier, the Controller may, with the consent of the Department of General Services, sell the property or any part thereof at private sale or at public auction.

History.—Stats. 1965, p. 1595, in effect September 17, 1965, substituted “Department of General Services” for the “Department of Finance.” Stats. 2000, Ch. 1053 (AB 2114), operative January 1, 2002, substituted “supplier” for “distributor” after “delinquent taxes of the”.

7932. Publication of notice of sale. He may advertise the sale by one publication, at least 10 days before the date set for the sale, in a newspaper of general circulation in the county in which the property to be sold is situated. If there is no newspaper of general circulation in the county, publication may be made by posting notice in three public places in the county 10 days prior to the date of sale.

7933. Sale of property. The Controller or his authorized representative shall conduct the sale, and he may reject any or all bids at the sale.

7934. Distribution of proceeds. The Controller shall distribute the proceeds of the sale in the following order:

- (a) The payment of all expenses of the sale.
- (b) The payment of all amounts due from the supplier under this part.
- (c) The remainder to the General Fund of the state.

History.—Stats. 1943, p. 2703, operative July 1, 1943, revised (b). Stats. 2000, Ch. 1053 (AB 2114), operative January 1, 2002, substitute “supplier” for “distributor” after “amounts due from the” in subdivision (b) and substituted “State” for “state” after “General Fund of the” in subdivision (c).

7935. Title of purchaser. At the sale the Controller shall deliver to the purchaser a bill of sale for any personal property and a deed for any real property sold. The bill of sale or deed vests title in the purchaser free from any existing lien for amounts due under this part.

History.—Stats. 1943, p. 2703, operative July 1, 1943, substituted “amounts due” for “taxes and penalties accruing” in second sentence.

Article 6. Payment on Termination of Business

- § 7956. Discontinuance notice of distribution.
- § 7957. Notice; form of.
- § 7958. Tax due concurrently with termination of business.
- § 7959. Liability of purchaser.

7956. Discontinuance notice of distribution. Whenever a supplier ceases to engage in business as a supplier within the state by reason of the discontinuance, sale, or transfer of the business, the supplier shall give notice in writing thereof to the board on or before the date of the discontinuance, sale, or transfer.

History.—Stats. 2000, Ch. 1053 (AB 2114), operative January 1, 2002, substituted “supplier” for “distributor” after “Whenever a” and after “engage in business as a”, substituted “state” for “State” after “within the”, and substituted “the supplier” for “he” after “or transfer of the business.”.

7957. Notice; form of. The notice shall give the date of discontinuance or, in the event of a sale or transfer of the business, the date thereof and the name and address of the purchaser or transferee.

7958. Tax due concurrently with termination of business. All amounts under this part, not yet due and payable under other provisions

History.—Stats. 2000, Ch. 1053 (AB 2114), operative January 1, 2002, substituted “supplier” for “distributor” after “The” and substituted “of the” for “such” after “and pay all”, and substituted “the supplier’s” for “his” after “and shall surrender” in the second sentence.

Article 7. Miscellaneous Provisions

- History.—Added by Stats. 1998, Ch. 609 (SB 2232), in effect January 1, 1999. Stats. 2001, Ch. 429 (AB 309), operative January 1, 2002, former subdivision (b) incorporated into subdivision (a); substituted “The” for “Any person who become liable for the” before “the backup tax imposed”, substituted “and any” for “as a highway vehicle operator/fueler . . . motor vehicle fuel, the tax,” after “under Section 7364”, substituted “shall be” for “if, any, become” after “penalties and interest”, and deleted “on account for all motor vehicle fuel used, delivered or sold” after “immediately due and payable” in the first sentence; substituted “sold, or delivered into the fuel tank of a motor vehicle fuel-powered highway vehicle, and” for “used, delivered, or sold and” after “amount of motor vehicle fuel”, deleted “, adding to the tax a penalty of 25 percent of the amount of tax or five hundred dollars (\$500), whichever is greater,” after “immediately the tax on the amount” in the second sentence; added the third sentence to subdivision (a); added subdivisions (b), (c), and (d); and relettered former subdivision (c) as subdivision (e).

- § 8101. Refunds on certain sales.
- § 8101.1. Refund—United States Department of Agriculture roads.
- § 8101.5. Refund—aircraft. [Repealed.]
- § 8101.5. No refund—aircraft.
- § 8101.6. Refund—public transportation.
- § 8101.7. Refund—vessel.
- § 8102. Claim for refund.
- § 8103. Amount of refund.
- § 8103.5. Penalty for false claim.
- § 8104. Controller may examine records of claimant.

- § 8104.5. Controller's extension of time for filing for refund.
- § 8105. Time for filing refund claims.
- § 8106. Credit in lieu of refund.
- § 8106.1. Credit in lieu of refund; foreign consulate sales.
- § 8106.5. Credit in lieu of refund; exported fuel.
- § 8106.7. Credit in lieu of refund; qualified distributor. [Repealed.]
- § 8106.8. Credit in lieu of refund; tax-paid fuel removed at rack.
- § 8107. No refund on losses.
- § 8108. Interest.
- § 8109. Claim payment deadline.

8101. Refunds on certain sales. The following persons who have paid a tax for motor vehicle fuel, either directly or to the vendor from whom it was purchased, or indirectly by the adding of the amount of the tax to the price of the fuel, shall, except as otherwise provided in this part, be reimbursed and repaid the amount of the tax:

(a) Any person who buys and uses the motor vehicle fuel for purposes other than operating motor vehicles upon the public highways of the state, except vehicles subject to identification under Division 16.5 (commencing with Section 38000) of the Vehicle Code, which are used for recreational purposes or are rented or leased for recreational purposes, and, on and after July 1, 1974, except motor vehicles subject to registration under Division 3 (commencing with Section 4000) of the Vehicle Code while engaged in off-highway recreational use.

(b) Any person who exports the motor vehicle fuel for use outside of this state. Motor vehicle fuel carried from this state in the fuel tank of a motor vehicle or aircraft is not deemed to be exported from this state unless the motor vehicle fuel becomes subject to tax as an "import" under the laws of the destination state.

(c) Any person who sells the motor vehicle fuel to the armed forces of the United States for use in ships or aircraft or for use outside this state, under circumstances that would have entitled him or her to an exemption from the payment of the tax under Section 7401 had he or she been the supplier of this fuel.

(d) Any person who buys and uses the motor vehicle fuel in any construction equipment which is exempt from vehicle registration pursuant to the Vehicle Code, while operated within the confines and limits of a construction project.

(e) Any supplier who sells motor vehicle fuel which is sold to any consulate officer or consulate employee under circumstances which would have entitled the supplier to an exemption under paragraph (4) of subdivision (a) of Section 7401 if the supplier had sold the motor vehicle fuel directly to the consulate officer or consulate employee.

(f) Any supplier who removes motor vehicle fuel at a rack and pays tax on that removal or who purchases tax-paid motor vehicle fuel outside the bulk transfer/terminal system and then delivers the tax-paid motor vehicle fuel to another approved terminal from which that supplier subsequently removes the tax-paid motor vehicle fuel at the terminal rack, but only to the extent that

the supplier can show that tax on the same amount of motor vehicle fuel has been paid more than one time by the same supplier.

(g) Any supplier who purchases tax-paid motor vehicle fuel in the bulk transfer/terminal system and subsequently removes the tax-paid motor vehicle fuel at the terminal rack, but only to the extent that the supplier can show that tax on the same amount of motor vehicle fuel has been paid more than one time by the same supplier. This subdivision applies only to those purchases made on or after January 1, 2002.

History.—Stats. 1943, p. 2703, operative July 1, 1943, added (e), authorizing refunds to persons selling motor vehicle fuel to the United States under certain circumstances. Stats. 1947 (First Extra Session 1947), p. 3815, in effect July 10, 1947, deleted former (d), authorizing refunds to the United States under certain circumstances, and (e). Stats. 1949, p. 2463, in effect October 1, 1949, added present (d). Stats. 1953, p. 3655, in effect July 11, 1953, added the clause beginning “unless” in (b). Stats. 1961, p. 1951, in effect September 15, 1961, added the proviso in (a), deleted (c) permitting refund or reimbursement of tax paid by any employee of the United States who buys motor vehicle fuel and uses it exclusively in transportation of rural free delivery mail and special delivery mail, relettered former (d) as (c), and added present (d). Stats. 1965, p. 4602, in effect September 17, 1965, added (e). Stats. 1968, p. 2296, in effect November 13, 1968, added “except as otherwise provided in this part” in the first sentence and reworded (a), deleting the proviso clause which imposed a one mile requirement on off-highway travel. Stats. 1972, Ch. 1158, effective December 7, 1972, added “or whose government does grant such an exemption to such representatives of the United States,” to (e); Ch. 1382 and Ch. 1405, operative January 1, 1973, added the language beginning “except vehicles . . .” to (a) and affected but did not change (e). Stats. 1973, Ch. 1195, effective October 2, 1973, added the language following “leased for recreational purposes.” in (a). Stats. 1990, Ch. 1528, in effect January 1, 1991 added “or her” and “or she” in subdivision (c); substituted current subdivision (e) for former subdivision (e) which provided, “Any consulate officer or consulate employee of a foreign government who is not engaged in any private occupation for gain within the State of California, whose government has entered into a treaty with the United States providing for the exemption of such representative from national, state, and municipal taxes, or whose government does grant such an exemption to such representatives of the United States, who uses the motor vehicle fuel in a vehicle registered exempt from fees pursuant to Section 9100 of the Vehicle Code.” Stats. 1999, Ch. 865 (SB 1302), in effect January 1, 2000, added subdivision (f). Stats. 2000, Ch. 1053 (AB 2114), operative January 1, 2002, deleted “license” after “who have paid a” in the first paragraph, added “or aircraft” after “fuel tank of a motor vehicle” in the second sentence of subdivision (b), deleted “license” after “from the payment of the” and substituted “supplier” for “distributor” after “Section 7401 had he or she been the” in subdivision (c); substituted “supplier” for “distributor” after “Any”, “which would have entitled the” and “Section 7401 if the”, and substituted “(4)” for “(6)” after “exemption under paragraph” in subdivision (e); and deleted subdivision (f). Stats. 2001, Ch. 429 (AB 309), operative January 1, 2002, added subdivisions (f) and (g).

Note.—Stats. 1961, p. 1952, contained a declaration that the addition of subdivision (d) did not constitute a change in, but was declaratory of, existing law.

Non-highway use.—When rollers and tractors are being used in the repair and construction of highways closed to the public, the public highways are not being “operated upon” in the sense intended by the law and therefore the tax is refundable as respects motor fuel used by such rollers and tractors while engaged in such work. *Oswald v. Johnson*, (1930) 210 Cal. 321.

Construction.—The person who “uses” motor vehicle fuel includes the lessor of trucks for agricultural purposes, where the lessor purchased the fuel and paid the tax to the vendor of the fuel. *DeForest v. Flournoy*, (1969) 272 Cal.App.2d 258.

8101.1. Refund—United States Department of Agriculture roads. For the purposes of subdivision (a) of Section 8101, the tax shall be refunded to any person with respect to fuel used in the operation of a motor vehicle on any highway which is under the jurisdiction of the United States Department of Agriculture and with respect to the use of such highway such person pays, or contributes to, the cost of construction or maintenance thereof pursuant to an agreement with or permission of, the United States Department of Agriculture.

History.—Added by Stats. 1967, p. 4215, in effect November 8, 1967.

8101.5. Refund—aircraft. [Repealed by Stats. 1989, Ch. 1027, effective September 29, 1989, operative January 1, 1990.]

8101.5. No refund—aircraft. No refund of any tax shall be granted on motor vehicle fuel used in propelling an aircraft in this state.

History.—Added by Stats. 1989, Ch. 1027, in effect September 29, 1989, operative January 1, 1990.

8101.6. **Refund—public transportation.** (a) No refund of any tax shall be granted on motor vehicle fuel used in propelling passenger carrying vehicles, except six cents (\$0.06) of the tax imposed upon each gallon of motor vehicle fuel used in propelling passenger carrying vehicles used for the transportation of persons for hire, compensation, or profit of the following:

(1) Any transit district, transit authority, or city owning and operating a local transit system itself or through a wholly owned nonprofit corporation.

(2) Any private entity providing transportation services for the transportation of people under contract or agreement, except general franchise agreements, with a public agency authorized to provide public transportation services, including, but not limited to, any nonprofit corporation designated as a consolidated transportation service agency pursuant to subdivision (a) of Section 15975 of the Government Code, which provides door-to-door transportation services under contract or agreement with a transit district, transit authority, or public agency authorized to provide transportation services, but only for fuels consumed while providing services under those contracts or agreements entered into subsequent to the effective date of this act.

(3) Any passenger stage corporation subject to the jurisdiction of the Public Utilities Commission when the motor vehicles of such passenger stage corporation are exclusively operated in urban or suburban areas or between cities in close proximity; provided, however, that the exemption is not extended to any line or lines operated by such passenger stage corporation which shall exceed 50 miles of one-way route mileage.

(4) Any common carrier of passengers operating exclusively on any line or lines within the limits of a single city between fixed termini or over a regular route, 98 percent of whose operations, as measured by total route mileage operated, are exclusively within the limits of a single city, and who by reason thereof is not a passenger stage corporation subject to the jurisdiction of the Public Utilities Commission.

(b) The exemption provided for in subdivision (a) shall not be applicable to motor vehicle fuel used by a charter-party carrier of passengers. The term “charter-party carrier of passengers” has the same meaning as that specified in Section 5360 of the Public Utilities Code and shall further include those transportation services described in subdivisions (a) and (e) of Section 5353 of the Public Utilities Code, if such transportation service is rendered as contract carriage and not as common carriage of passengers.

(c) There are in the State of California many private entities providing public transportation services for the transportation of people in vehicles other than buses under contract or agreement with local government, transit districts or local bus transit operators. It is the purpose of this section to provide relief from the payment of fuel tax for gasoline fuel for those private entities only for fuels consumed while providing these services.

History.—Added by Stats. 1978, Ch. 1140, operative January 1, 1979. Stats. 1979, Ch. 373, effective January 1, 1980, changed “excepts” to “except” in (a) (2). Stats. 1982, Ch. 762, in effect September 8, 1982, added “or any . . . services” after “corporation” in subsection (1) of subdivision (a). Stats. 1982, Ch. 1500, in effect September 28, 1982, deleted “or any . . . services” after “corporation” in subsection (1) of, and added “for the transportation of people” before “under” in subsection 2 of, subdivision (a). Stats. 1983, Ch. 46, in effect January 1, 1984, added “including, . . . services, but” before “only” and substituted “those” for “such” before “contracts” in subsection (2) of subdivision (a) and added subdivision (c).

Note.—Section 2 of Stats. 1983, Ch. 46, provided the “Legislature finds and declares that the amendments made to Section 8101.6 of the Revenue and Taxation Code by this act are declaratory of existing law.”

8101.7. Refund—vessel. No refund of any tax shall be granted which is attributable to the distribution of motor vehicle fuel for use or used in propelling a vessel in the state, except any tax which is attributable to the distribution of motor vehicle fuel for use or used in propelling a vessel operated by its owner on waters located on private property owned or controlled by him.

History.—Added by Stats. 1968, p. 1038, in effect November 13, 1968. Stats. 1969, p. 131, in effect November 10, 1969, substituted “sales” for “rates” in the third paragraph. Stats. 1971, p. 2790, operative July 1, 1972, rearranged wording and deleted last sentence declaring legislative intent.

Note.—Stats. 1968, p. 1038, in effect November 13, 1968, provides that “The provisions of this act shall apply to fuel purchased after 12:01 a.m. of the day on which this act becomes effective.”

8102. Claim for refund. (a) The claimant of a refund shall present to the Controller a claim supported by the original invoice showing the purchase or other evidence of each purchase that is satisfactory to the Controller. The claim shall state the total amount of the fuel purchased by the claimant and the manner and the equipment in which the claimant has used the fuel. The claim shall state the total amount of motor vehicle fuel covered by the claim and if the motor vehicle fuel was exported, a statement that the claimant has proof of exportation. The claim shall state that the amounts claimed have not been previously refunded to the claimant and that there are no other claims outstanding for the amounts included in the current claim for refund. The claim shall not be under oath but shall contain, or be accompanied by, a written declaration that it is made under the penalties of perjury. If no original invoice was created, electronic invoicing shall be accepted as reflected by a computerized facsimile when accompanied by an original copy of the bill of lading or fuel manifest that can be directly tied to the electronic invoice.

(b) Each claim for refund under this section shall be made on a form prescribed by the Controller and shall be filed for a calendar year, except for claims relating to exportation of fuel. If, at the close of any of the first three quarters of the calendar year, more than seven hundred fifty dollars (\$750) is refundable under this section with respect to any motor vehicle fuel used, sold, or exported during that quarter or any prior quarter during the calendar year, and for which no other claim has been filed, a claim may be filed for the quarterly period. To facilitate the administration of this section, the Controller may require the filing of claims for refund for other than yearly periods. Export claims may be filed at any time.

History.—Stats. 1947 (First Extra Session 1947), p. 3815, in effect July 10, 1947, substituted claim made under penalties of perjury for affidavit as basis for refund. Stats. 1959, p. 4417, in effect September 18, 1959, deleted “the fact that the claimant has paid the price of the fuel” from the second sentence and added “by the claimant” in the same sentence. Stats. 1997, Ch. 76 (SB 612), in effect July 16, 1997, added subdivision designation “(a)”, added third sentence and last sentence to subdivision (a), and added subdivision (b). Stats. 2003, Ch. 697 (AB 1741), effective January 1, 2004, added “or other evidence of each purchase that is satisfactory to the Controller” after “invoice showing the purchase” in the first sentence of subdivision (a).

8103. Amount of refund. The Controller, upon the presentation of the properly completed claim and the invoice or other evidence of each purchase that is satisfactory to the Controller, shall cause to be paid to the claimant from the taxes collected under this part an amount equal to the taxes collected on the motor vehicle fuel in respect to which the refund is claimed.

History.—Stats. 1947 (First Extra Session 1947), p. 3815, in effect July 10, 1947, substituted “claim” for “affidavit.” Stats. 1997, Ch. 76 (SB 612), in effect July 16, 1997, added “properly completed” after “presentation of the” in the first sentence and added the second sentence. Stats. 2000, Ch. 1053 (AB 2114), operative January 1, 2002, deleted “license” after “to the claimant from the” and “an amount equal to the” in the first sentence. Stats. 2003, Ch. 697 (AB 1741), effective January 1, 2004, added “or other evidence of each purchase that is satisfactory to the Controller” after “completed claim and the invoice” and deleted the former second sentence.

8103.5. Penalty for false claim. Any person who wilfully makes or subscribes to a claim for refund under this article which he does not believe to be true and correct as to every material matter, shall be guilty of a felony, and upon conviction thereof shall be subject to the penalties prescribed for perjury by the Penal Code.

History.—Added by Stats. 1947 (First Extra Session 1947), p. 3815, in effect July 10, 1947.

8104. Controller may examine records of claimant. In order to establish the validity of any claim the Controller may, upon demand, examine the books and records of the claimant for that purpose. The failure of the claimant to accede to that demand constitutes a waiver of all right to the refund claimed on account of the transactions questioned. The examination may be made either through employees of the office of the Controller or of the office of the board. Supporting evidence of all purchases included in a claim for refund shall be maintained by the claimant for inspection by the Controller or the office of the board for four years after the date of refund.

History.—Stats. 2003, Ch. 697 (AB 1741), effective January 1, 2004, substituted “that” for “such” after “claimant for” in the first sentence and after “to accede to” in the second sentence, and added the fourth sentence.

8104.5. Controller’s extension of time for filing for refund. If any person does not use motor vehicle fuel as provided in subdivision (a) of Section 8101 within the time required for filing an application for a refund, he may within that time file a written request with the Controller for an extension of time within which to apply for a refund. The request shall state the amount of fuel involved, the date of its purchase, and the manner and the equipment in which the fuel is intended to be used. Thereupon the Controller may extend the time within which an application for refund may be filed.

History.—Added by Stats. 1943, p. 1995, in effect July 1, 1943.

8105. Time for filing refund claims. All applications for refund provided under this article shall be filed within three years from the date of the purchase of the motor vehicle fuel or, if the tax was not invoiced at the time of the purchase of the motor vehicle fuel, the application for refund shall

be filed within six months after the receipt of an invoice for the tax, whichever period expires later. Any application filed after the time prescribed shall not be considered for any purpose by the Controller, the Treasurer, or the state.

History.—Stats. 1943, p. 1995, in effect July 1, 1943, added to second sentence proviso relating to extension of time. Stats. 1957, p. 1891, in effect September 11, 1957, added “under Section 8101”; substituted “three months” for “90 days”; added “for refund provided under said Section”; substituted “13” for “12” months. Stats. 1963, p. 1271, in effect September 20, 1963, substituted “after the close of the calendar month in which fuel is exported” for “from the date of exportation.” Stats. 1972, Ch. 1273, in effect March 7, 1973, substituted “this article” for “said section” in the third sentence. Stats. 1989, Ch. 437, in effect January 1, 1990, substituted “state” for “State”, added “the later of” after “the Controller within”, and added “or 13 months from the date of purchase of the fuel” in the first sentence, deleted “The Controller for good cause may extend for not more than six months the time for which the claim for refund may be filed on account of the exportation, provided a request therefor is filed with the Controller within or prior to the period for which the extension may be granted.”, and deleted “State” and substituted “state” in the last sentence. Stats. 1997, Ch. 76 (SB 612), in effect July 16, 1997, substituted “provided under this article shall be filed within three years” for “under Section 8101 based upon exportation of motor vehicle fuel from this state shall be filed with the Controller within the later of three months after the close of the calendar month in which the fuel is exported or 13 months from the date of the purchase of the fuel. All other applications for refund provided under this article, except where an extension of time has been granted, shall be filed within 13 months” after “applications for refund” in the first sentence, and deleted “state” before “Treasurer” in the last sentence. Stats. 2003, Ch. 605 (SB 1060), effective January 1, 2004, added “or, if the tax was not invoiced . . . whichever period expires later” after “purchase of the motor vehicle fuel” in the first sentence.

Refund for exportation of tax-paid fuel.—When plaintiff’s subsequent use of its tax-paid fuel entitle it to a refund of taxes which it had indirectly paid through an addition to the purchase price, the applicable provisions are refund provisions, not exemption provisions. *Willbark Petroleum Carriers, Inc. v. Cory* (1989) 208 Cal.App.3d 269.

8106. Credit in lieu of refund. In lieu of the collection and refund of the tax on motor vehicle fuel used by a supplier in the manner as would entitle a purchaser to claim refund under this article, credit may be given the supplier upon the supplier’s tax return and the determination of the amount of tax.

History.—Stats. 2000, Ch. 1053 (AB 2114), operative January 1, 2002, substituted “supplier in the” for “distributor in such a” after “vehicle fuel used by a” and substituted “supplier upon the supplier’s” for “distributor upon his”.

8106.1. Credit in lieu of refund; foreign consulate sales. In lieu of the collection and refund of the tax on motor vehicle fuel sold to a consulate officer or consulate employee of a foreign government by a licensed supplier who would be entitled to claim a refund under subdivision (e) of Section 8101, a credit may be given the supplier upon the supplier’s tax return and the determination of the amount of tax shall be in accordance with any rules and regulations which the board may prescribe.

History.—Added by Stats. 1990, Ch. 1528, in effect January 1, 1991. Stats. 2000, Ch. 1053 (AB 2114), operative January 1, 2002, substituted “supplier” for “distributor” after “foreign government by a licensed”, substituted “supplier upon the supplier’s” for “distributor upon his or her” after “a credit may be given the”, and added “his or her” after “of the amount of”.

8106.5. Credit in lieu of refund; exported fuel. In lieu of the collection and refund of the tax on motor vehicle fuel exported by a licensed supplier for use outside the state in such a manner as would entitle a supplier to claim a refund under subdivision (b) of Section 8101, credit may be given the supplier upon the supplier’s tax return and the determination of the amount of tax in accordance with such rules and regulations as the board may prescribe.

History.—Added by Stats. 1981, Ch. 947, in effect January 1, 1982. Stats. 2000, Ch. 1053 (AB 2114), operative January 1, 2002, substituted “supplier” for “distributor” after “exported by a licensed” and “manner as would entitle a”, substituted “supplier upon the supplier’s” for “distributor upon his or her” after “credit may be given the” and added “his or her” after “the determination of the amount of”.

8106.7. Credit in lieu of refund; qualified distributor. [Repealed by Stats. 2000, Ch. 1053 (AB 2114), operative January 1, 2002.]

8106.8. **Credit in lieu of refund; tax-paid fuel removed at rack.** In lieu of the collection and refund of the tax on tax-paid motor vehicle fuel removed at a terminal rack by a supplier who is entitled to claim a refund of tax under subdivision (f) or (g) of Section 8101, credit may be given the supplier upon the supplier's tax return. The amount of tax and refund shall be determined in accordance with such rules and regulations as the board may prescribe.

History.—Added by Stats. 2001, Ch. 429 (AB 309), operative January 1, 2002.

8107. **No refund on losses.** No refund shall be granted for losses in handling, transporting, or storing motor vehicle fuel.

8108. **Interest.** If any claim for refund of tax is paid more than 20 calendar days from the date upon which the claim was received by the Controller, interest shall be computed, allowed, and paid upon that refund of tax at the Pooled Money Investment Account's Annual Yield Rate in effect on the date prior to the date that the interest on the refund of tax begins to accrue. Interest on the refund of tax shall begin to accrue on the 21st calendar day after the date that a properly completed claim for refund is received by the Controller. The interest shall accrue through the date the Controller refunds the tax. No interest shall be granted on credits taken on tax returns.

History.—Added by Stats. 1997, Ch. 76 (SB 612), in effect July 16, 1997.

8109. **Claim payment deadline.** (a) A refund filed pursuant to subdivision (b) of Section 8101 shall be paid to the claimant within 20 calendar days of the receipt of a claim for refund by the Controller.

(b) Notwithstanding subdivision (a), the claim for refund shall be submitted on a properly completed form or in substantially similar format, as prescribed by the Controller.

History.—Added by Stats. 1997, Ch. 76 (SB 612), in effect July 16, 1997.

Article 2. Claim for Refund

- § 8126. Refund in case of excess payments.
- § 8127. Credits and refunds.
- § 8127.5. Excess tax reimbursement.
- § 8127.6. Tax reimbursement; qualified distributor. [Repealed.]
- § 8128. Claim; limitation period.
- § 8128.1. Claim limitation; financially disabled.
- § 8129. Form and content of claim.
- § 8130. Interest on erroneous overpayments.
- § 8131. When interest not allowed.

8126. **Refund in case of excess payments.** If the board determines that any amount not required to be paid under this part has been paid by any person to the state, the board shall set forth that fact in its records and certify the amount collected in excess of the amount legally due and the person from whom it was collected and certify the amount to the Controller for credit or refund. Any proposed determination by the board pursuant to this section with respect to an amount in excess of fifty thousand dollars (\$50,000) shall be available as a public record for at least 10 days prior to the effective date of that determination.

History.—Stats. 1945, p. 1065, operative July 1, 1945, deleted reference to section 8191 as it read prior to its repeal by said act. Stats. 1959, p. 2471, in effect September 18, 1959, added last sentence. Stats. 1961, p. 1253, in effect September 15, 1961, substituted “one hundred dollars (\$100)” for “twenty-five dollars (\$25).” Stats. 1963, p. 3106, in effect September 20, 1963, added “set forth that fact in its records and” in the first sentence, and substituted “two hundred fifty dollars (\$250)” for “one hundred dollars (\$100)” in the second paragraph. Stats. 1965, p. 2053, in effect September 17, 1965, substituted “one thousand dollars (\$1,000)” for “two hundred fifty dollars (\$250).” Stats. 1977, Ch. 921, operative January 1, 1978, substituted “five thousand dollars (\$5,000)” for “one thousand dollars (\$1,000)” in the second paragraph. Stats. 1985, Ch. 591, effective January 1, 1986, substituted “fifteen thousand dollars (\$15,000)” for “five thousand dollars (\$5,000)” in second paragraph. Stats. 1988, Ch. 1029, in effect January 1, 1989, substituted “fifty thousand dollars (\$50,000)” for “fifteen thousand dollars (\$15,000)” in the second paragraph. Stats. 1994, Ch. 726, in effect September 22, 1994, deleted “to the State Board of Control” after “records and certify”; deleted “, if the State Board of Control approves, shall” after “it was collected and”; added “Any proposed determination . . . of that determination.” as the second sentence; and deleted the second paragraph which read: “In the case, however, of a determination by the board that an amount not exceeding fifty thousand dollars (\$50,000) was not required to be paid under this part, the board without obtaining the approval of the State Board of Control, may certify the amount to the Controller for credit or refund.” Stats. 2000, Ch. 1053 (AB 2114), operative January 1, 2002, added “that is licensed as a supplier” after “has been paid by any person” in the first sentence. Stats. 2001, Ch. 429 (AB 309), operative January 1, 2002, substituted “to the state” for “that is licensed as a supplier” after “paid by any person” in the first sentence. Stats. 2001, Ch. 429 (AB 309), operative January 1, 2002, substituted “to the state” for “that is licensed as a supplier” after “paid by any person” in the first sentence.

8127. Credits and refunds. The Controller shall thereupon credit the excess on any amounts then due from the person under this part and refund the balance to the person or his successors, administrators, executors, or assigns.

8127.5. Excess tax reimbursement. When an amount represented by a person who is a taxpayer under this part to a customer as constituting reimbursement for taxes due under this part is computed upon an amount that is not taxable or is in excess of the taxable amount and is actually paid by the customer to the person, the amount so paid shall be returned by the person to the customer upon notification by the Board of Equalization or by the customer that the excess has been ascertained. If the person fails or refuses to do so, the amount so paid, if knowingly or mistakenly computed by the person upon an amount that is not taxable or is in excess of the taxable amount, shall be remitted by that person to this state. Those amounts remitted to the state shall be credited by the Controller on any amounts due and payable under this part on the same transaction from the person by whom it was paid to this state and the balance, if any, shall constitute an obligation due from the person to this state.

History.—Added by Stats. 1996, Ch. 1087, in effect January 1, 1997.

8127.6. Tax reimbursement; qualified distributor. [Repealed by Stats. 2000, Ch. 1053 (AB 2114), operative January 1, 2002.]

8128. Claim; limitation period. (a) Except as provided in subdivision (b) no refund under this article shall be approved by the board after three years from the last day of the month following the month for which the overpayment was made, or with respect to determinations made under Article 3, 4, or 5 of Chapter 5 of this part, after six months from the dates the determinations become final, or after six months from the date of overpayment, whichever period expires the later, unless a claim therefor is filed with the board within that period. No credit shall be approved by the board after the expiration of that period unless a claim for credit is filed with the board within that period, or unless the credit relates to a period for which a waiver is given pursuant to Section 7676.

(b) A refund may be approved by the board for any period for which a waiver is given under Section 7676 if a claim therefor is filed with the board before the expiration of the period agreed upon.

History.—Stats. 1959, p. 2471, in effect September 18, 1959, completely revised this section which formerly had only a three-year period. Stats. 1965, p. 4440, in effect September 17, 1965, rewrote this section to provide for refunds under certain circumstances. Stats. 1983, Ch. 1102, in effect September 27, 1983, operative November 1, 1983, substituted “25th day of the calendar month” for “first day of the second calendar month” before “following” in the first sentence of subdivision (a). Stats. 2000, Ch. 1053 (AB 2114), operative January 1, 2002, substituted “last” for “25th” after “after three years from the”, added “calendar” after “day of the”, substituted “under Article 3, 4, or 5” for “under Article 2, 2.5 or 3” after “or with respect to determinations made”, substituted “that” for “such” after “filed with the board with” in the first sentence of subdivision (a); substituted “that” for “such” after “board after the expiration of” in the second sentence of subdivision (a).

8128.1. Claim limitation; financially disabled. (a) The limitation period specified in Section 8128 shall be suspended during any period of a person’s life that the person is financially disabled.

(b) (1) For purposes of subdivision (a), a person is financially disabled if the person is unable to manage his or her financial affairs by reason of medically determinable physical or mental impairment of the person which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months. A person shall not be considered to have an impairment unless proof of the existence thereof is furnished in the form and manner as the board may require.

(2) A person shall not be treated as financially disabled during any period that the person’s spouse or any other person is authorized to act on behalf of the person in financial matters.

(c) This section applies to periods of disability commencing before, on, or after the effective date of the act adding this section, but does not apply to any claim for refund that (without regard to this section) is barred by the operation or rule of law, including res judicata, as of the effective date of the act adding this section.

History.—Added by Stats. 2000, Ch. 1052 (AB 2898), in effect January 1, 2001.

8129. Form and content of claim. The claim shall be in writing and shall state the specific grounds upon which it is founded.

8130. Interest on erroneous overpayments. Interest shall be paid upon any overpayment of any amount of tax at the modified adjusted rate per month established pursuant to Section 6591.5, from the first day of the month following the period during which the overpayment is made. In addition, a refund or credit shall be made of any interest imposed upon the claimant with respect to the amount being refunded or credited.

The interest shall be paid as follows:

(a) In the case of a refund, to the last day of the month following the date upon which the person making the overpayment, if he or she has not already filed a claim, is notified by the board that a claim may be filed or the date upon which the claim is approved by the board, whichever date is the earlier.

(b) In the case of a credit, to the same date as that to which interest is computed on the tax or amount against which the credit is applied.

History.—Added by Stats. 1943, p. 2707, operative July 1, 1943, as Section 8193. Renumbered Section 8130 by Stats. 1945, p. 1066, operative July 1, 1945. Stats. 1963, p. 3107, in effect September 20, 1963, substituted the numerical figures “10th” and “30th” for the words “tenth” and “thirtieth” in paragraph (a). Stats. 1975, Ch. 661, operative to interest accruing on or after January 1, 1976, substituted “1 percent” for “one-half of 1 percent.” Stats. 1982, Ch. 5, First Extra Session, in effect May 27, 1982, substituted “adjusted . . . 19269” for “rate . . . month” before “from” in the first sentence. Stats. 1983, Ch. 1102, in effect September 27, 1983, operative November 1, 1983, substituted “25th day of the calendar month” for “first day of the second calendar month” before “following” in the first sentence. Stats. 1984, Ch. 1020, effective January 1, 1985, operative July 1, 1985, substituted “modified . . . month” for “adjusted annual rate” before “established,” substituted “Section 6591.5” for “Section 19269,” deleted “calendar” before “month” in first paragraph, deleted all text of (a) and added all new text. Stats. 1992, Ch. 1336, in effect January 1, 1993, substituted “26th” for “25th” after “from the,” deleted “monthly” before “period,” substituted “during” for “for” after “period,” and substituted “. . . In addition, a” for “; but no” in the first sentence; and added “as follows” after “paid” in the second paragraph. Stats. 2000, Ch. 1053 (AB 2114), operative January 1, 2002, substituted “first” for “26th” after “Section 6591.5, from the” in the first sentence of the first paragraph, substituted “last” for “25th” after “In the case of a refund, to the” in subdivision (b).

8131. When interest not allowed. (a) If the board determines that any overpayment has been made intentionally or by reason of carelessness, it shall not allow any interest thereon.

(b) If any person who has filed a claim for refund requests the board to defer action on the claim, the board, as a condition to deferring action, may require the claimant to waive interest for the period during which the person requests the board to defer action on the claim.

History.—Stats. 1945, p. 1066, operative July 1, 1945, renumbered section 8194 as section 8131. Stats. 1998, Ch. 420 (SB 2230), in effect January 1, 1999, added subdivision designation “(a)” and added subdivision (b).

Article 3. Suit for Refund

- § 8146. Injunction forbidden.
- § 8147. Action for refund.
- § 8148. Action; limitation period.
- § 8149. When refund claim not acted upon.
- § 8149.5. Failure to bring timely suit.
- § 8150. Judgment credits and refunds.
- § 8151. Interest on judgment.
- § 8152. Judgment for assignee forbidden.

8146. Injunction forbidden. No injunction or writ of mandate or other legal or equitable process shall issue in any suit, action, or proceeding in any court against this state or against any officer of the state to prevent or enjoin the collection under this part of any tax determined by the board.

History.—Stats. 2000, Ch. 1053 (AB 2114), operative January 1, 2002, substituted “state” for “State” after “in any court against this” and “against any officer of the,” and deleted “license” after “under this part of any.”

Purchaser may not question tax.—The purchaser of motor vehicle fuel may not question the constitutionality of the tax. *Williams v. Riley*, (1929) 280 U.S. 78.

8147. Action for refund. No suit or proceeding shall be maintained in any court for the recovery of any amount collected or paid under this part unless a claim for refund or credit has been duly filed under Article 1 or 2 of this chapter.

History.—Stats. 1959, p. 2471, in effect September 18, 1959, completely revised this section which had previously provided for a payment under protest and suit in Sacramento County.

Note.—Stats. 1959, p. 2471, amended Sections 8147, 8148, 8149, and added Section 8149.5 provides: “Nothing contained in this act shall be construed to prevent the commencement or maintenance of any action for the recovery of taxes paid under protest prior to the date on which this act takes effect.”

8148. Action; limitation period. Within 90 days after the mailing of the notice of action upon a claim for refund or credit, the claimant may bring an action against the Controller with respect to a claim under Article 1 of this chapter, or against the board with respect to a claim filed under Article 2 of

this chapter on the grounds set forth in the claim in a court of competent jurisdiction in the County of Sacramento for the recovery of the whole or any part of the amount with respect to which the claim has been disallowed.

History.—Stats. 1949, p. 1342, in effect October 1, 1949, substituted one year for 90 days and “payment of the license tax sought to be recovered” for “last day prescribed for the payment of the license tax without penalty.” Stats. 1959, p. 2472, in effect September 18, 1959, completely revised this section which previously provided for a year limitation.

Note.—See note following Section 8147.

8149. When refund claim not acted upon. If the board or the Controller fails to mail notice of action on a claim within six months after the claim is filed, the claimant may, prior to the mailing of notice, consider the claim disallowed and bring an action against the Controller or the board on the grounds set forth in the claim for the recovery of the whole or any part of the amount claimed.

History.—Stats. 1959, p. 2472, in effect September 18, 1959, completely changed the subject matter of this section.

Note.—See note following Section 8147.

8149.5. Failure to bring timely suit. Failure to bring suit or action within the time specified in this article constitutes a waiver of all demands against the State on account of any alleged claim.

History.—Added by Stats. 1959, p. 2472, in effect September 18, 1959.

Note.—See note following Section 8147.

8150. Judgment credits and refunds. If judgment is rendered for the plaintiff, the amount of the judgment shall first be credited on any taxes due from the plaintiff under this part, Part 3 (commencing with Section 8601), and Part 31 (commencing with Section 60001), and the balance of the judgment shall be refunded to the plaintiff.

History.—Stats. 1995, Ch. 555, in effect January 1, 1996, added “Part 3 (commencing . . . with Section 60001),” after “under this part.” Stats. 2000, Ch. 1053 (AB 2114), operative January 1, 2002, deleted “license” after “first be credited on any”.

8151. Interest on judgment. In any judgment, interest shall be allowed at the modified adjusted rate per annum established pursuant to Section 6591.5 upon the amount found to have been illegally collected from the date of payment thereof to the date of allowance of credit on account of the judgment or to a date preceding the date of the refund warrant by not more than 30 days, the date to be determined by the board.

History.—Added by Stats. 1975, Ch. 661, operative to interest accruing on or after January 1, 1976, substituted “12 percent” for “6 percent.” Stats. 1982, Ch. 5, First Extra Session, in effect May 27, 1982, substituted “adjusted . . . 19269” for “rate . . . annum” before “upon.” Stats. 1984, Ch. 1020, effective January 1, 1985, operative July 1, 1985, substituted “modified . . . per annum” for “adjusted annual rate,” substituted “Section 6591.5” for “Section 19269.” Stats. 1995, Ch. 555, in effect January 1, 1996, deleted “of the license tax” after “upon the amount”.

8152. Judgment for assignee forbidden. A judgment shall not be rendered in favor of the plaintiff in any action brought against the State Treasurer to recover any tax paid when the action is brought by or in the name of an assignee of the supplier paying the tax or by any person other than the person who paid the tax.

History.—Stats. 2000, Ch. 1053 (AB 2114), operative January 1, 2002, deleted “license” after “State Treasurer to recover any” and “other than the person who paid the”, and substituted “supplier” for “distributor” after “name of an assignee of the”.

Article 4. Recovery of Erroneous Refunds

- § 8171. Controller's recovery of erroneous refunds.
- § 8172. Place of trial.
- § 8173. Rules of procedure.
- § 8174. Interest on erroneous refunds.

8171. Controller's recovery of erroneous refunds. (a) The Controller may recover any refund or part thereof that is erroneously made, and any credit or part thereof that is erroneously allowed, in an action brought in a court of competent jurisdiction in the County of Sacramento in the name of the people of the State of California.

(b) As an alternative to subdivision (a), the board may recover any refund or part thereof that is erroneously made, and any credit or part thereof that is erroneously allowed. In recovering any erroneous refund or credit, the board may, in its discretion, issue a deficiency determination in accordance with Article 2.5 (commencing with Section 7670) or Article 3 (commencing with Section 7698) of Chapter 5. Except in the case of fraud, the deficiency determination shall be made by the board within three years from the date of the Controller's warrant or date of credit.

History.—Stats. 1998, Ch. 609 (SB 2232), in effect January 1, 1999, added subdivision designation "(a)", substituted "that" for "which" after "or part thereof" in subdivision (a), and added subdivision (b).

Note.—SEC. 61. of Stats. 1998, Ch. 609 (SB 2232), effective January 1, 1999, states: It is the intent of the Legislature in enacting those provisions of this act that allow the State Board of Equalization to recover refunds administratively that no increase in taxpayer costs result from taxpayer compliance with these provisions.

8172. Place of trial. In any action brought pursuant to subdivision (a) of Section 8171, the court may, with the consent of the Attorney General, order a change in the place of trial.

History.—Stats. 1998, Ch. 609 (SB 2232), in effect January 1, 1999, substituted "In any action . . . change in the" for "The action shall be tried in the County of Sacramento unless the court with the consent of the Attorney General orders a change of".

8173. Rules of procedure. The Attorney General shall prosecute any action brought pursuant to subdivision (a) of Section 8171, and the provisions of the Code of Civil Procedure relating to service of summons, pleadings, proofs, trials, and appeals shall apply to the proceedings.

History.—Stats. 1998, Ch. 609 (SB 2232), in effect January 1, 1999, substituted "any action brought . . . Code" for "the action, and the provisions of the code" after "General shall prosecute" and substituted "shall apply" for "are applicable" after "trials, and appeals".

8174. Interest on erroneous refunds. (a) Notwithstanding any other provision of this part, if the board finds that neither the person liable for payment of tax nor any party related to that person has in any way caused an erroneous refund for which an action for recovery is provided under Section 8171, no interest shall be imposed on the amount of that erroneous refund until 30 days after the date on which the board mails a notice of determination for repayment of the erroneous refund to the person. The act of filing a claim for refund shall not be considered as causing the erroneous refund.

(b) This section shall be operative for any action for recovery under Section 8171 on or after January 1, 2000.

History.—Added by Stats. 1999, Ch. 929 (AB 1638), in effect January 1, 2000.

Article 5. Cancellations

§ 8191. Correction of erroneous determination.

8191. Correction of erroneous determination. If the board determines that any amount has been illegally determined to be due from any person either by the person filing the return or by the board, the board shall set forth that fact in its records, certify the amount determined to be in excess of the amount legally due and the person against whom the determination was made, and authorize the cancellation of the amount upon the records of the board and the Controller. Any proposed determination by the board pursuant to this section with respect to an amount in excess of fifty thousand dollars (\$50,000) shall be available as a public record for at least 10 days prior to the effective date of that determination.

History.—Stats. 1945, p. 1065, operative July 1, 1945, repealed original Section 8191 (relating to determinations where returns incorrect), renumbered Section 8192 as Section 8191 and deleted reference therein to the original section. Stats. 1959, p. 2472, in effect September 18, 1959, added “and the board” to the end of the last sentence. Stats. 1961, p. 1252, in effect September 15, 1961, added the provision which allows the board to authorize the cancellation of illegally determined motor vehicle fuel license taxes of \$100 or less without the approval of the State Board of Control. Stats. 1963, p. 3107, in effect September 20, 1963, added “If the board determines that” and “set forth that fact in its records” in the first sentence, and substituted “two hundred fifty dollars (\$250)” for “one hundred dollars (\$100)” in the first and last sentences. Stats. 1965, p. 2053, in effect September 17, 1965, in the first and second sentences substituted “one thousand dollars (\$1,000)” for “two hundred fifty dollars (\$250).” Stats. 1977, Ch. 921, operative January 1, 1978, substituted “five thousand dollars (\$5,000)” for “one thousand dollars (\$1,000)” in the first and last sentence. Stats. 1985, Ch. 591, effective January 1, 1986, substituted “fifteen thousand dollars (\$15,000)” for “five thousand dollars (\$5,000)” after “the amount upon the records of the board and the Controller. If an amount not exceeding”. Stats. 1988, Ch. 1029, in effect January 1, 1989, substituted “fifty thousand dollars (\$50,000)” for “fifteen thousand dollars (\$15,000)” before “has been illegally determined” in the first and last sentences. Stats. 1994, Ch. 726, in effect September 22, 1994, deleted “in excess of fifty thousand dollars (\$50,000)” after “that any amount”; substituted a comma for “and” after “in its records”; deleted “to the State Board of Control” after “certify”; substituted “, and” for “. If the State Board of Control approves, it shall” after “determination was made”; and substituted “Any proposed determination . . . of that determination.” for “If an amount not exceeding fifty thousand dollars (\$50,000) has been illegally determined either by the person filing a return or by the board, the board without certifying this fact to the State Board of Control shall authorize the cancellation of the amount upon the records of the board.”

CHAPTER 8. ADMINISTRATION

- Article 1. Administration. §§ 8251–8257.
2. The California Taxpayers’ Bill of Rights. §§ 8260–8277.

Uncodified Sections

1. Multiagency task force.

Article 1. Administration.

- § 8251. Administration procedure.
§ 8252. Administrative representatives.
§ 8253. Examination of licensee records.
§ 8254. Special conferences.
§ 8255. Furnishing information to governmental officials.
§ 8256. Certificate of notice.
§ 8257. Information confidential; Tax preparer.

8251. Administration procedure. The board shall enforce the provisions of this part, except insofar as duties and powers are vested in the Controller, and may prescribe, adopt, and enforce rules and regulations relating to the administration and enforcement of this part. The board may prescribe the extent to which any ruling or regulation shall be applied without retroactive effect.

8252. Administrative representatives. The board may employ attorneys, accountants, auditors, investigators, and other expert and clerical assistance necessary to enforce its powers and perform its duties under this part.

History.—Stats. 1959, p. 4418, in effect September 18, 1959, added last sentence. Stats. 1968, p. 2330, in effect November 13, 1968, deleted the former last sentence which conferred peace officer powers upon the board and its representatives.

8253. Examination of licensee records. The board may make any examinations of the books and records of highway vehicle operators/fuelers, industrial users, pipeline operators, suppliers, train operators, or vessel operators, and any other investigations as it may deem necessary in carrying out the provisions of this part.

History.—Stats. 1943, p. 2704, operative July 1, 1943, added “producers and brokers.” Stats. 2000, Ch. 1053 (AB 2114), operative January 1, 2002, substituted “any” for “such” after “The board may make”, and substituted “books and records of highway vehicle operators/fuelers, industrial users, pipeline operators, suppliers, train operators, or vessel operators, and any” for “records of distributors, producers and brokers and such” after “examinations of the”.

8254. Special conferences. As this State is the source of petroleum products for other states, if such examination or investigation necessitates collaboration or conference with motor vehicle fuel tax officials of other states, at places inside or outside this State, such collaboration or conference is declared to be a necessary function in the administration of this part.

8255. Furnishing information to governmental officials. (a) Upon request from the officials to whom is entrusted the enforcement of the motor fuel tax law of another government the board or the Controller may furnish to such officials such information in the possession of the board or the Controller which is deemed essential to the enforcement of the motor fuel tax laws.

Any information so furnished shall not be used for any purpose other than that for which it was furnished.

(b) The board may furnish to any state or federal agency investigating violations of or enforcing any state or federal law related to motor fuels any motor fuel information in the possession of the board that is deemed necessary for the enforcement of those laws.

History.—Added by Stats. 1959, p. 4418, in effect September 18, 1959. Stats. 1997, Ch. 620 (SB 1102), in effect January 1, 1998, added subdivision designation “(a)” and added subdivision (b).

8256. Certificate of notice. A certificate by the board or an employee of the board stating that a notice required by this part was given by mailing or personal service shall be prima facie evidence in any administrative or judicial proceeding of the fact and regularity of the mailing or personal service in accordance with any requirement of this part for the giving of a notice. Unless otherwise specifically required, any notice provided by this part to be mailed or served may be given either by mailing or by personal service in the manner provided for giving notice of a deficiency determination.

History.—Added by Stats. 1974, Ch. 610, effective January 1, 1975.

8257. Information confidential; tax preparer. (a) Except as otherwise provided by law, any person who is engaged in the business of

preparing, or providing services in connection with the preparation of, returns under Chapter 5 (commencing with Section 7651), or any person who for compensation prepares any such return for any other person, and who knowingly or recklessly does either of the following, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than one thousand dollars (\$1,000) or imprisoned no more than one year, or both, together with the costs of prosecution:

(1) Discloses any information furnished to him or her for, or in connection with, the preparation of the return.

(2) Uses that information for any purpose other than to prepare, or assist in preparing, the return.

(b) Subdivision (a) shall not apply to disclosure of information if that disclosure is made pursuant to the person's consent or pursuant to a subpoena, court order, or other compulsory legal process.

History.—Added by Stats. 2000, Ch. 1052 (AB 2898), in effect January 1, 2001.

Article 2. The California Taxpayers' Bill of Rights *

- § 8260. Administration.
- § 8261. Taxpayers' Rights Advocate.
- § 8262. Education and information program.
- § 8263. Annual hearing with taxpayers.
- § 8264. Preparation of statements by board.
- § 8265. Limit on revenue collected or assessed.
- § 8266. Evaluation of employee's contact with taxpayers.
- § 8267. Plan to timely resolve claims and petitions.
- § 8268. Procedures relating to protest hearings.
- § 8269. Reimbursement of taxpayer.
- § 8270. Investigation for nontax administration purposes.
- § 8272. Release of levy.
- § 8273. Exemptions from levy.
- § 8276. Revocation or suspension of license.
- § 8277. Disregard by board employee or officer.

8260. Administration. The board shall administer this article. Unless the context indicates otherwise, the provisions of this article shall apply to this part.

8261. Taxpayers' Rights Advocate. (a) The board shall establish the position of the Taxpayers' Rights Advocate. The advocate or his or her designee shall be responsible for facilitating resolution of taxpayer complaints and problems, including any taxpayer complaints regarding unsatisfactory treatment of taxpayers by board employees, and staying actions where taxpayers have suffered or will suffer irreparable loss as the result of those actions. Applicable statutes of limitation shall be tolled during the pendency of a stay. Any penalties and interest that would otherwise accrue shall not be affected by the granting of a stay.

(b) The advocate shall report directly to the executive officer of the board.

8262. Education and information program. (a) The board shall develop and implement an education and information program directed at, but not limited to, all of the following groups:

* Article 2 was added by Stats. 1992, Ch. 438, in effect January 1, 1993.

- (1) Taxpayers newly registered with the board.
- (2) Board audit and compliance staff.

(b) The education and information program shall include all of the following:

(1) A program of written communication with newly registered taxpayers explaining in simplified terms their duties and responsibilities.

(2) Participation in seminars and similar programs organized by federal, state, and local agencies.

(3) Revision of taxpayer educational materials currently produced by the board that explain the most common areas of taxpayer nonconformance in simplified terms.

(4) Implementation of a continuing education program for audit and compliance personnel to include the application of new legislation to taxpayer activities and areas of recurrent taxpayer noncompliance or inconsistency of administration.

(c) Electronic media used pursuant to this section shall not represent the voice, picture, or name of members of the board or of the Controller.

History.—Stats. 1999, Ch. 929 (AB 1638), in effect January 1, 2000, added “and compliance” after “program for audit” in paragraph (4) of subdivision (b).

8263. Annual hearing with taxpayers. The board shall conduct an annual hearing before the full board where industry representatives and individual taxpayers are allowed to present their proposals on changes to the Motor Vehicle Fuel Tax Law which may further improve voluntary compliance and the relationship between taxpayers and government.

History.—Stats. 2000, Ch. 1053 (AB 2114), operative January 1, 2002, substituted “Fuel” for “License” after “changes to the Motor Vehicle”.

8264. Preparation of statements by board. The board shall prepare and publish brief but comprehensive statements in simple and nontechnical language that explain procedures, remedies, and the rights and obligations of the board and taxpayers. As appropriate, statements shall be provided to taxpayers with the initial notice of audit, the notice of proposed additional taxes, any subsequent notice of tax due, or other substantive notices. Additionally, the board shall include this language for statements in the annual tax information bulletins that are mailed to taxpayers.

8265. Limit on revenue collected or assessed. (a) The total amount of revenue collected or assessed pursuant to this part shall not be used for any of the following:

(1) To evaluate individual officers or employees.

(2) To impose or suggest production quotas or goals, other than quotas or goals with respect to accounts receivable.

(b) The board shall certify in its annual report submitted pursuant to Section 15616 of the Government Code that revenue collected or assessed is not used in a manner prohibited by subdivision (a).

(c) Nothing in this section shall prohibit the setting of goals and the evaluation of performance with respect to productivity and the efficient use of time.

8266. Evaluation of employee's contact with taxpayers. The board shall develop and implement a program that will evaluate an individual employee's or officer's performance with respect to his or her contact with taxpayers. The development and implementation of the program shall be coordinated with the Taxpayers' Rights Advocate.

8267. Plan to timely resolve claims and petitions. The board shall, in cooperation with the Taxpayers' Rights Advocate, and other interested taxpayer-oriented groups, develop a plan to reduce the time required to resolve petitions for redetermination and claims for refunds. The plan shall include determination of standard timeframes and special review of cases that take more time than the appropriate standard timeframe.

8268. Procedures relating to protest hearings. Procedures of the board, relating to appeals staff review conferences before a staff attorney or supervising tax auditor independent of the assessing department, shall include all of the following:

(a) Any conference shall be held at a reasonable time at a board office that is convenient to the taxpayer.

(b) The conference may be recorded only if prior notice is given to the taxpayer and the taxpayer is entitled to receive a copy of the recording.

(c) The taxpayer shall be informed prior to any conference that he or she has a right to have present at the conference his or her attorney, accountant, or other designated agent.

8269. Reimbursement of taxpayer. (a) Every taxpayer is entitled to be reimbursed for any reasonable fees and expenses related to a hearing before the board if all of the following conditions are met:

(1) The taxpayer files a claim for the fee and expenses with the board within one year of the date the decision of the board becomes final.

(2) The board, in its sole discretion, finds that the action taken by the board staff was unreasonable.

(3) The board decides that the taxpayer be awarded a specific amount of fees and expenses related to the hearing, in an amount determined by the board in its sole discretion.

(b) To determine whether the board staff has been unreasonable, the board shall consider whether the board staff has established that its position was substantially justified.

(c) The amount of reimbursed fees and expenses shall be limited to the following:

(1) Fees and expenses incurred after the date of the notice of determination, jeopardy determination, or a claim for refund.

(2) If the board finds that the staff was unreasonable with respect to certain issues but reasonable with respect to other issues, the amount of reimbursed fees and expenses shall be limited to those that relate to the issues where the staff was unreasonable.

(d) Any proposed award by the board pursuant to subdivision (a) shall be available as a public record for at least 10 days prior to the effective date of the award.

(e) The amendments to this section by the act adding this subdivision shall be operative for claims filed on or after January 1, 2000.

History.—Stats. 1995, Ch. 555, in effect January 1, 1996, substituted “board” for “State Board of Control” after “expenses with the” in paragraph (1) of, substituted “decides” for “makes a recommendation to the State Board of Control” after “The board” in paragraph (3) of, and deleted paragraph (4) which read: “The State Board of Control concurs with the recommendation and orders the board to provide reimbursement of fees and expenses to the taxpayer.” from, subdivision (a); and added subdivision (d). Stats. 1999, Ch. 929 (AB 1638), in effect January 1, 2000, added “within one year . . . board becomes final” after “with the board” in paragraph (1) of, and substituted “in an amount . . . its sole discretion” for “which shall be determined by the board” after “to the hearing,” in paragraph (3) of, subdivision (a), substituted “board staff has . . . substantially justified” for “taxpayer has established that the position of the board staff was not substantially justified” after “consider whether the” in subdivision (b), and added subdivision (e). Stats. 2000, Ch. 1052 (AB 2898), in effect January 1, 2001, substituted “the notice of determination, jeopardy determination, or a claim” for “filing for petitions of redetermination and claims” after “incurred after the date of” in paragraph (1) of subdivision (c).

8270. Investigation for nontax administration purposes. (a) An officer or employee of the board acting in connection with any law administered by the board shall not knowingly authorize, require, or conduct any investigation of, or surveillance over, any person for nontax administration related purposes.

(b) Any person violating subdivision (a) shall be subject to disciplinary action in accordance with the State Civil Service Act, including dismissal from office or discharge from employment.

(c) This section shall not apply with respect to any otherwise lawful investigation concerning organized crime activities.

(d) The provisions of this section are not intended to prohibit, restrict, or prevent the exchange of information where the person is being investigated for multiple violations which include motor vehicle fuel tax violations.

(e) For the purposes of this section:

(1) “Investigation” means any oral or written inquiry directed to any person, organization, or governmental agency.

(2) “Surveillance” means the monitoring of persons, places, or events by means of electronic interception, overt or covert observations, or photography, and the use of informants.

History.—Stats. 2000, Ch. 1053 (AB 2114), operative January 1, 2002, deleted “license” after “include motor vehicle fuel” in subdivision (d).

8272. Release of levy. (a) The Controller shall release any levy or notice to withhold issued pursuant to this part on any property in the event the expense of the sale process exceeds the liability for which the levy is made.

(b) The Controller shall not sell any seized property until it has first notified the taxpayer in writing of the exemptions from levy under Chapter 4 (commencing with Section 703.010) of Division 2 of Title 9 of Part 2 of the Code of Civil Procedure.

(c) This section shall not apply to the seizure of any property as a result of a jeopardy assessment.

History.—Stats. 1993, Ch. 589, in effect January 1, 1994, added “of Division 2” before “of Title 9” and added “Part 2 of” before “the Code” in subdivision (b).

8273. Exemptions from levy. Exemptions from levy under Chapter 4 (commencing with Section 703.010) of Division 2 of Title 9 of Part 2 of the Code of Civil Procedure shall be adjusted for purposes of enforcing the collection of debts under this part to reflect changes in the California Consumer Price Index whenever the change is more than 5 percent higher than any previous adjustment.

History.—Stats. 1993, Ch. 589, in effect January 1, 1994, added “of Division 2” before “of Title 9” and added “Part 2 of” before “the Code”.

8276. Revocation or suspension of license. For the purposes of this part only, the board shall not revoke or suspend a person’s license pursuant to Section 7507 or 7508 unless the board has mailed a notice preliminary to revocation or suspension that indicates that the taxpayer will be suspended by a date certain pursuant to that section. The notice preliminary to suspension shall be mailed to the taxpayer at least 60 days before the date certain.

8277. Disregard by board employee or officer. (a) If any officer or employee of the board recklessly disregards board-published procedures, a taxpayer aggrieved by that action or omission may bring an action for damages against the State of California in superior court.

(b) In any action brought under subdivision (a), upon finding of liability on the part of the State of California, the state shall be liable to the plaintiff in an amount equal to the sum of all of the following:

(1) Actual and direct monetary damages sustained by the plaintiff as a result of the actions or omissions.

(2) Reasonable litigation costs including any of the following:

(A) Reasonable court costs.

(B) Prevailing market rates for the kind or quality of services furnished in connection with any of the following:

(i) The reasonable expenses of expert witnesses in connection with the civil proceeding, except that no expert witness shall be compensated at a rate in excess of the highest rate of compensation for expert witnesses paid by the State of California.

(ii) The reasonable cost of any study, analysis, engineering report, test, or project that is found by the court to be necessary for the preparation of the party’s case.

(iii) Reasonable fees paid or incurred for the services of attorneys in connection with the civil proceeding, except that those fees shall not be in excess of seventy-five dollars (\$75) per hour unless the court determines that an increase in the cost of living or a special factor, such as the limited availability of qualified attorneys for the proceeding, justifies a higher rate.

(c) In the awarding of damages under subdivision (b), the court shall take into consideration the negligence or omissions, if any, on the part of the plaintiff which contributed to the damages.

(d) Whenever it appears to the court that the taxpayer's position in the proceeding brought under subdivision (a) is frivolous, the court may impose a penalty against the plaintiff in an amount not to exceed ten thousand dollars (\$10,000). A penalty so imposed shall be paid upon notice and demand from the board and shall be collected as a tax imposed under this part.

Uncodified Sections

1. § Multiagency task force.

1. **Multiagency task force.** (a) The multiagency task force established pursuant to Executive Order D-51-86 (hereinafter referred to as "task force") shall include among its goals and objectives the following:

(1) To deter tax evasion by maximizing recoveries from blatant tax evaders and violators of cash-pay reporting laws, utilizing all penalties which are available to the taxing and enforcement agencies under existing law.

(2) To reduce enforcement costs by eliminating duplicative audits and investigations.

(3) To generate greater voluntary taxpayer compliance and to deter tax and cash-pay violations by publicizing the efforts of the task force.

(4) To provide opportunities for auditors and investigators from tax and enforcement agencies to become familiar with other agencies' laws and enforcement procedures.

(5) To concentrate its efforts in investigating and prosecuting violations of cash-pay and tax laws by employers with five or more employees and by individuals who are habitual or willfull violators of those laws.

(b) In addition to the responsibilities cited in Executive Order D-51-86, the task force shall be empowered to do all of the following:

(1) Identify areas of blatant violations and noncompliance with tax and cash-pay laws.

(2) Solicit referrals from the tax and enforcement agencies represented on the task force committee of instances of blatant violations and noncompliance with tax and cash-pay laws.

(3) Conduct audits, investigations, and referrals for prosecution of violations referred by other agencies and in the identified areas of violations and noncompliance, using all enforcement powers available in existing laws and regulations.

(4) Establish an advertised telephone "hotline" for referrals from the public.

(5) Publicize the activities of the task force.

(6) Keep the audit and investigative staff of the tax and enforcement agencies represented on the task force committee fully informed of the activities of the task force.

(7) Develop procedures for improved information sharing among the agencies represented on the task force committee, consistent with restrictions on disclosure of confidential tax information in existing law, for the purpose of improving enforcement.

(8) Based on the activities of the task force, evaluate the need for any law changes to do any of the following:

(A) Eliminate barriers to interagency information sharing.

(B) Improve agencies' ability to audit, investigate, and prosecute tax and cash-pay violations.

(C) Deter violations and improve voluntary compliance.

(D) Eliminate duplication and improve cooperation among the participating agencies.

(c) The task force shall report to the Governor, the Senate and Assembly Revenue and Taxation Committees, and the Commission on California State Government Organization and Economy every six months during the period it is in existence, beginning on March 1, 1987, regarding the activities of the task force. The reports shall include, but not be limited to, all of the following:

(1) The number of cases of blatant violations and noncompliance with tax and cash-pay laws identified, audited or investigated, and referred for prosecution.

(2) Actions taken by the task force to publicize its activities.

(3) Efforts made by the task force to establish an advertised telephone "hotline" for referrals from the public.

(4) Procedures developed for improved information sharing among the agencies represented on the task force.

(5) Steps taken by the task force to improve cooperation among participating agencies, reduce duplication of effort, and improve voluntary compliance.

(6) Recommendations for any law changes needed to accomplish the goals described in paragraph (8) of subdivision (b).

History.—Added by Section 40, Stats. 1986, Ch. 1361, effective January 1, 1987.

CHAPTER 9. RECORDS *

- § 8301. Records.
- § 8302. Information to retain.
- § 8303. Inspection of records.
- § 8304. Sworn statement.

8301. Records. Every highway vehicle operator/fueler, industrial user, pipeline operator, supplier, train operator, vessel operator and every person dealing in, removing, transporting, or storing motor vehicle fuel in this state shall keep those records, receipts, invoices, and other pertinent papers with respect thereto in that form as the board may require. Failure to maintain records will constitute a misdemeanor punishable as provided in Section 8402.

* Added by Stats. 2000, Ch. 1053 (AB 2114), operative January 1, 2002.

8302. **Information to retain.** (a) Each terminal operator shall keep the following information with respect to each rack removal of motor vehicle fuel at each terminal it operates:

- (1) The bill of lading or other shipping document.
- (2) The volume and date of the removal.
- (3) The identity of the person, such as a common carrier, that physically received the fuel.

(4) The identity of the position holder or position holder's customer.

(5) Any other information required by the Internal Revenue Service pursuant to Section 48.4101-1 of Title 26 of the Code of Federal Regulations.

(b) The terminal operator shall maintain the information described in this section at the terminal from which the removal occurred for at least three months after the removal to which it relates. Thereafter, the terminal operator shall retain the information at a location controlled by the terminal operator for at least four more years.

8303. **Inspection of records.** All records required by this chapter shall be available at all times for the inspection of the board or its representatives.

8304. **Sworn statement.** Upon demand of the board or its representatives a highway vehicle operator/fueler, industrial user, pipeline operator, supplier, train operator, and vessel operator shall furnish a statement under oath reflecting the contents of any records kept by the highway vehicle operator/fueler, industrial user, pipeline operator, supplier, train operator, and vessel operator with respect to the matters specified in this chapter.

CHAPTER 10. DISTRIBUTION OF PROCEEDS

- § 8351. Deposit of fund.
- § 8352. Appropriation of fund.
- § 8352.1. Fund expenditures.
- § 8352.2. Transfer to State Transportation Fund.
- § 8352.3. Transfer to Aeronautics Account.
- § 8352.4. Transfer to Harbors and Watercraft Revolving Fund.
- § 8352.5. Transfer to Agriculture Fund.
- § 8352.6. Transfer to Off-Highway Vehicle Fund.
- § 8352.7. Transfer to Off-Highway Vehicle Fund.
- § 8352.8. Transfer to State Highway Account. [Repealed.]
- § 8352.8. Transfer to Conservation and Enforcement Services Account.
- § 8352.9. Withhold of report preparation costs.
- § 8353. Transfer to Highway Users Tax Fund.
- § 8359. Revolving fund.
- § 8360. Expenses of court action.

8351. **Deposit of fund.** The Controller shall transmit all money received by him or her in payment of taxes, interest, and penalties due under this part to the State Treasurer who shall deposit it in the State Treasury and credit it to the Motor Vehicle Fuel Fund, which is continued in existence as the Motor Vehicle Fuel Account in the Transportation Tax Fund, which fund

is hereby created. All fees paid and accepted for issuance or reinstatement of licenses under this part shall be deposited by the board in the State Treasury to the credit of the same account.

Any reference in any law or regulation to the Motor Vehicle Fuel Fund shall be deemed to refer to the Motor Vehicle Fuel Account in the Transportation Tax Fund.

History.—Stats. 1963, p. 1272, in effect September 20, 1963, substituted “interest and penalties due under this part” for “and license fees,” and added the second sentence. Stats. 1971, p. 2427, operative January 1, 1972. Changed title of Motor Vehicle Fuel Fund to Motor Vehicle Fuel Account and created the Transportation Tax Fund. Stats. 2000, Ch. 1053 (AB 2114), operative January 1, 2002, added “or her” after “all money received by him” and deleted “license” after “in payment of” in the first sentence of first paragraph.

8352. Appropriation of fund. Subject to the provisions of any budget bill heretofore or hereafter enacted, the money deposited to the credit of the Motor Vehicle Fuel Account is hereby appropriated for expenditure, allocation, or transfer as provided in this chapter.

History.—Stats. 1947 (First Extra Session 1947), p. 3806, operative January 1, 1948, substituted “Highway Users Tax Fund” for “counties” in (d), deleted (e) making appropriation to State Highway Fund and relettered former (f) as (e). Stats. 1949, p. 2546, operative January 1, 1950, added (f). Stats. 1955, p. 2026, in effect September 7, 1955, added portion of first sentence beginning “the sum of” in (f). Stats. 1957, p. 769, in effect September 11, 1957, substituted Section “11006 of the Government” for Section “661 of the Political” Code. Stats. 1959, p. 2841, in effect September 18, 1959, added (g). Stats. 1961, p. 4389, in effect September 15, 1961, amended (f) to provide for the transfer of funds to the Airport Assistance Fund instead of to the counties and added the language “and less the pro rata cost . . . attributable to determining such amount of money.” Stats. 1963, p. 4374, in effect September 20, 1963, substituted “two million dollars (\$2,000,000)” for “seven hundred fifty thousand dollars (\$750,000)” and “1963–1964” for “1959–1960” in paragraph (g). Stats. 1965, p. 4599, in effect September 17, 1965, completely revised (f) and substituted “four million dollars (\$4,000,000)” for “two million dollars (\$2,000,000)” and “1965–1966” for “1963–1964” in (g). Stats. 1966, p. 480 (First Extra Session), in effect October 6, 1966, substituted “Harbors and Watercraft Revolving Fund” for “Small Craft Harbor Revolving Fund” and “Division 1 (commencing with Section 30) of the Harbors and Navigation Code” for “Division 5.7 (commencing with Section 5801) of the Public Resources Code.” Stats. 1967, p. 2804, in effect November 8, 1967, added the last sentence to (q). Stats. 1969, p. 368, in effect November 10, 1969, substituted “Department” for “Division” of Aeronautics in (f)(3). Stats. 1970, p. 3232, in effect November 23, 1970, added (h). Stats. 1971, p. 368, in effect June 30, 1971, completely revised (g), and p. 2427, operative January 1, 1972, divided former 8352 into numbered subsections. Stats. 1972, Ch. 1382, in effect December 26, 1972, substituted “8352.6 inclusive.” for “8352.5 inclusive.”. Stats. 1973, Ch. 1153, operative July 1, 1974, and Ch. 1195, effective October 2, 1973, substituted “this chapter” for specified sections. Stats. 2004, Ch. 227 (SB 1102), in effect August 16, 2004, deleted “and Section 11006 of the Government Code” after “heretofore or hereafter enacted”.

8352.1. Fund expenditures. The money deposited to the credit of the Motor Vehicle Fuel Account may be expended for the following purposes:

(a) To pay the refunds authorized in this part, including refunds due on account of judgments for the return of taxes illegally collected.

(b) To the Controller, to carry out any duties imposed upon him or her by this part.

(c) To the board, to carry out any duties imposed upon it by this part.

(d) To pay the pro rata share of the overhead and general administrative expense of the Controller and the board attributable to duties imposed by this part. The pro rata share is payable upon presentation of a claim against any appropriation from the Motor Vehicle Fuel Account for the support of the Controller or the board, as the case may be.

History.—Added by Stats. 1971, p. 2428, operative January 1, 1972. Stats. 2000, Ch. 1053 (AB 2114), operative January 1, 2002, deleted “license” after “judgments for the return of” in subdivision (a) and added “or her” after “imposed upon him” in subdivision (b).

8352.2. Transfer to State Transportation Fund. Subject to the provisions of this chapter, the money deposited to the credit of the Motor Vehicle Fuel Account shall be transferred to the State Transportation Fund, which is hereby created, as provided in this chapter.

History.—Added by Stats. 1971, p. 2428, operative January 1, 1972. Stats. 1973, Ch. 1153, operative July 1, 1974, substituted “this chapter” for several specific sections.

8352.3. Transfer to Aeronautics Account. Subject to Sections 8352 and 8352.1, all moneys deposited to the credit of the Motor Vehicle Fuel Account attributable to the distribution of motor vehicle fuel for use or used in propelling an aircraft in the state shall be transferred to the Aeronautics Account in the State Transportation Fund, for allocation as follows:

(a) To pay the refunds authorized by Section 8101.5.

(b) To pay the pro rata cost of the Controller and the board under subdivisions (b), (c), and (d) of Section 8352.1.

(c) To pay for the support of the Department of Transportation, for the administration of the State Aeronautics Act (Division 9 (commencing with Section 21001) of the Public Utilities Code).

(d) Remaining balance to be available for expenditures in accordance with Section 21602, and 21682 to 21684, inclusive, of the Public Utilities Code.

History.—Added by Stats. 1971, p. 2428, operative January 1, 1972. Stats. 1982, Ch. 681, in effect January 1, 1983, deleted “the provisions of” after “Subject to” in the first sentence, and substituted “Division of Aeronautics of the Department of Transportation” for “Department of Aeronautics” after “of the” in subdivision (c). Stats. 1998, Ch. 877 (AB 2132), in effect January 1, 1999, deleted “there shall be transferred to the Aeronautics Account in the State Transportation Fund” after “8352 and 8352.1,” and substituted “state shall be . . . State Transportation Fund” for “state,” in the first paragraph; substituted “Department of Transportation . . . Public Utilities Code)” for “Division of Aeronautics of the Department of Transportation.” after “support of the” in subdivision (c); and substituted “expenditures in accordance . . . Public Utilities Code.” for “the California Aid to Airports Program.” after “be available for” in subdivision (d).

8352.4. Transfer to Harbors and Watercraft Revolving Fund. Subject to Sections 8352 and 8352.1, there shall be transferred from the money deposited to the credit of the Motor Vehicle Fuel Account to the Harbors and Watercraft Revolving Fund, for expenditure in accordance with Division 1 (commencing with Section 30) of the Harbors and Navigation Code, the sum of six million six hundred thousand dollars (\$6,600,000) per annum, representing the amount of money in the Motor Vehicle Fuel Account attributable to taxes imposed on distributions of motor vehicle fuel used or usable in propelling vessels. The actual amount shall be calculated using the annual reports of registered boats prepared by the Department of Motor Vehicles for the United States Coast Guard and the formula and method of the December 1972 report prepared for this purpose and submitted to the Legislature on December 26, 1972, by the Director of Transportation. If the amount transferred during each fiscal year is in excess of the calculated amount, the excess shall be retransferred from the Harbors and Watercraft Revolving Fund to the Motor Vehicle Fuel Account. If the amount transferred is less than the amount calculated, the difference shall be transferred from the Motor Vehicle Fuel Account to the Harbors and Watercraft Revolving Fund. No adjustment shall be made if the computed difference is less than fifty thousand dollars (\$50,000), and the amount shall be adjusted to reflect any temporary or permanent increase or decrease that may be made in the rate under the Motor Vehicle Fuel Tax Law. Payments pursuant to this section shall be made prior to payments pursuant to Section 8352.2.

When deemed necessary by the Department of Transportation and the Department of Boating and Waterways, the Department of Transportation, after consultation with the Department of Boating and Waterways, shall prepare, or cause to be prepared, an updated report setting forth the current estimate of the amount of money credited to the Motor Vehicle Fuel Account attributable to taxes imposed on distributions of motor vehicle fuel used or usable in propelling vessels. The Department of Transportation shall submit the report to the Legislature upon its completion.

History.—Added by Stats. 1971, p. 2428, operative January 1, 1972. Stats. 1973, Ch. 700, operative January 1, 1974, made the following substitutions: “six million dollars (\$6,000,000) . . . 1973–1974” in place of “five million two hundred thousand dollars (\$5,200,000) . . . 1970–1971”; “six million two hundred thousand dollars (\$6,200,000) . . . 1974–1975” in place of “five million six hundred thousand dollars (\$5,600,000) . . . 1971–1972”; “six million four hundred thousand (\$6,400,000) in the 1975–1976 fiscal year, and six million six hundred thousand dollars (\$6,600,000) in the 1976–1977” fiscal year, in place of “six million dollars (\$6,000,000) . . . 1972–1973.” Deleted the second sentence: “If the amount so transferred during each of such fiscal years is in excess of ten dollars and two cents (\$10.02) multiplied by the estimated number of boats in existence as of December 31st of each year, the excess shall be retransferred from the Harbors and Watercraft Revolving Fund to the Motor Vehicle Fuel Account.” In the last paragraph deleted “The Department of Public Works,” added “an updated” preceding “report,” changed “Public Works” to “Transportation,” deleted “on or before the fifth calendar day of 1973 regular session and each four years thereafter” following “report to the Legislature” and substituted “upon its completion.” Stats. 1982, Ch. 681, in effect January 1, 1983, deleted “the provisions of” before “Sections 8352” and “Division 1” in, deleted “six million dollars . . . fiscal year, and” before “six million six” and “commencing . . . sums” before “representing” in the first sentence of, substituted “fiscal year” for “of such fiscal years” before “is in excess” in the third sentence of, substituted “. No” for “; provided no such” after “Fund” in the fourth sentence of, and deleted “further provided that such” before “amount” in the new fifth sentence of, the first paragraph; and, substituted “Department of Boating and Waterways” for “Department of Navigation and Ocean Development” in the first sentence of; substituted “. The” for “; and the,” and substituted “the” for “such” in the second sentence of, paragraph 2. Stats. 2000, Ch. 1053 (AB 2114), operative January 1, 2002, deleted “so” after “if the amount” and substituted “retransferred” for “transferred” in the third sentence of, deleted “so” after “transferred is less than the amount” in the fourth sentence of, and deleted “License” after “Motor Vehicle Fuel” in the fifth sentence of, the first paragraph.

8352.5. Transfer to Agriculture Fund. Subject to Sections 8352 and 8352.1, there shall be transferred from the money deposited to the credit of the Motor Vehicle Fuel Account to the Department of Food and Agriculture Fund, during the second quarter of each fiscal year, an amount equal to the estimate contained in the most recent report prepared pursuant to this section.

The amounts are not subject to Section 6357 with respect to the collection of sales and use taxes thereon, and represent the portion of receipts in the Motor Vehicle Fuel Account during a calendar year that were attributable to agricultural off-highway use of motor vehicle fuel which is subject to refund pursuant to Section 8101, less gross refunds allowed by the Controller during the fiscal year ending June 30th following the calendar year to persons entitled to refunds for agricultural off-highway use pursuant to Section 8101. Payments pursuant to this subdivision shall be made prior to payments pursuant to Section 8352.2.

On or before September 30th of each odd-numbered year, the Director of Transportation and the Director of Food and Agriculture shall jointly prepare, or cause to be prepared, a report setting forth the current estimate of the amount of money in the Motor Vehicle Fuel Account attributable to agricultural off-highway use of motor vehicle fuel, which is subject to refund pursuant to Section 8101 less gross refunds allowed by the Controller to persons entitled to refunds for agricultural off-highway use pursuant to Section 8101; and they shall submit a copy of the report to the Legislature.

History.—Added by Stats. 1971, p. 2429, operative January 1, 1972. Stats. 1978, Ch. 817, effective January 1, 1979, in the first paragraph deleted “as follows” following “Department of Agriculture Fund”, substituted the above language and deleted subdivisions (a), (b) and (c). In the second paragraph added “State” preceding “Controller” and in the third paragraph deleted “May 31, and on or before September 30, 1973, and every two years thereafter” and substituted “September 30th of each odd-numbered year” deleted “Secretary of the Agriculture and Services Agency” and substituted “Director of Food and Agriculture” and added “State” preceding “Controller”. Stats. 1984, Ch. 579, effective January 1, 1985, deleted “the provisions of” after “Subject to” in first paragraph, substituted “The” for “Such”, deleted “the provisions of” before “Section 6357,” deleted “State” before “Controller,” deleted “such” before “refunds” in second paragraph, substituted “Director of Transportation” for “Secretary of the Business and Transportation Agency,” deleted “State” before “Controller,” deleted “such” before “refunds,” substituted “the” for “such” in third paragraph.

8352.6. Transfer to Off-Highway Vehicle Fund. (a) Subject to Sections 8352 and 8352.1, on the first day of every month, there shall be transferred from money deposited in the Motor Vehicle Fuel Account to the Off-Highway Vehicle Trust Fund created by Section 38225 of the Vehicle Code an amount determined on the basis of the estimate contained in the most recent report prepared pursuant to this section.

(b) The amount transferred pursuant to subdivision (a) represents the portion of receipts in the Motor Vehicle Fuel Account that is attributable to taxes imposed upon distributions of motor vehicle fuel used in the off-highway operation of vehicles identified by being currently registered as off-highway vehicles as required by Division 16.5 (commencing with Section 38000) of the Vehicle Code for which a refund has not been claimed. Transfers made pursuant to this section shall be made prior to transfers pursuant to Section 8352.2.

(c) On or before August 15, 1973, and every two years thereafter, the Department of Transportation shall prepare, or cause to be prepared, in cooperation with the Department of Parks and Recreation, a report setting forth the current estimate of the amount of money credited to the Motor Vehicle Fuel Account that is attributable to taxes imposed on distributions of motor vehicle fuel used in the off-highway operation of vehicles identified by being currently registered as off-highway vehicles as required by Division 16.5 (commencing with Section 38000) of the Vehicle Code for which a refund has not been claimed, and shall submit a copy of the report to the Legislature.

History.—Added by Stats. 1972, Ch. 1382 and Ch. 1405, in effect December 26, 1972. Stats. 1975, Ch. 508, in effect September 6, 1975, substituted “Department of Transportation” for “Department of Public Works.” Stats. 1975, Ch. 1050, in effect January 1, 1976, substituted “subject to identification” for “identified.” Stats. 1977, Ch. 352, operative January 1, 1978, added “on the first day of every month,” reworded and renumbered the subsections, and deleted obsolete provisions. Stats. 1986, Ch. 1009, effective January 1, 1987, substituted “identified by being currently classified as off-highway vehicles as required by” for “subject to identification under”, deleted the phrase “the provisions of” in the first sentence and “and shall submit a copy of such report to the Legislature” in (c). Also added “Transfers made pursuant to this section shall be made prior to transfers pursuant to Section 8352.2.” Stats. 1994, Ch. 1004, in effect January 1, 1995, added “Trust” after “Off-Highway Vehicle” in subdivision (a); added “, and shall submit . . . to the Legislature” after “not been claimed” in, and deleted “Transfers made pursuant to this section shall be made prior to transfers pursuant to Section 8352.2.” at the end of, subdivision (c).

8352.7. Transfer to Off-Highway Vehicle Fund. (a) Subject to Section 8352.1, on the first day of every month, there shall be transferred from money deposited to the credit of the Motor Vehicle Fuel Account to the Off-Highway Vehicle Trust Fund created by Section 38225 of the Vehicle Code an amount determined on the basis of the estimate contained in the most recent report prepared pursuant to this section.

(b) The amount transferred pursuant to subdivision (a) represents the money deposited to the credit of the Motor Vehicle Fuel Account that is

attributable to taxes imposed upon distributions of motor vehicle fuel used in motor vehicles subject to registration under Division 3 (commencing with Section 4000) of the Vehicle Code, while engaged in off-highway recreational use, for which a refund has not been claimed, or for which no person is entitled to a refund. Transfers made pursuant to this section shall be made prior to transfers pursuant to Section 8352.2.

(c) On or before August 15, 1975, and every two years thereafter, the Department of Transportation shall prepare, or cause to be prepared, in cooperation with the Department of Parks and Recreation, a report, a copy of which shall be submitted to the Legislature, setting forth the current estimate of the amount of money credited to the Motor Vehicle Fuel Account that is attributable to taxes imposed on distributions of motor vehicle fuel used in motor vehicles subject to registration under Division 3 (commencing with Section 4000) of the Vehicle Code, while engaged in off-highway recreational use, and for which a refund has not been claimed, or for which no person is entitled to a refund.

(d) It is the intent of the Legislature that the off-highway recreational use, to be determined by the Department of Transportation pursuant to this section, be that usage by vehicles subject to registration under Division 3 (commencing with Section 4000) of the Vehicle Code, for recreation or the pursuit of recreation on surfaces where the use of vehicles registered under Division 16.5 (commencing with Section 38000) of the Vehicle Code may occur.

History.—Added by Stats. 1973, Ch. 1195, effective October 2, 1973. Stats. 1974, Ch. 1134, effective January 1, 1975, deleted material relating to the expenses of the report in part (a)(2). Stats. 1977, Ch. 352, operative January 1, 1978, added "on the first day of every month," in (a), deleted (1) and (2), and substituted "transfers" for "payments" in (b). Stats. 1994, Ch. 1004, in effect January 1, 1995, substituted "Section" for "the provisions of Sections 8352 and" and added "Trust" after "Off-Highway Vehicle" in subdivision (a).

8352.8. Transfer to State Highway Account. [Repealed by Stats. 1982, Ch. 681, in effect January 1, 1983.]

8352.8. Transfer to Conservation and Enforcement Services Account. (a) The Conservation and Enforcement Services Account is hereby established as an account in the Off-Highway Vehicle Trust Fund. Subject to Sections 8352 and 8352.1, on the first day of every month there shall be transferred from money deposited in the Motor Vehicle Fuel Account to the Conservation and Enforcement Services Account the total amount determined on the basis of the estimates contained in this section.

(b) On or before August 15, 1987, and every two years thereafter, the Department of Transportation shall prepare, or cause to be prepared, in cooperation with the Department of Parks and Recreation, a report setting forth the current estimate of the amount of money credited to the Motor Vehicle Fuel Account that is attributable to taxes imposed upon distributions of motor vehicle fuel estimated to have been used in the off-highway operation of vehicles required to be registered as off-highway vehicles by Division 16.5 (commencing with Section 38000) of the Vehicle Code, but which were not so registered, and shall submit a copy of the report to the Legislature.

(c) Funds in the Conservation and Enforcement Services Account shall be allocated to the Division of Off-Highway Motor Vehicle Recreation of the Department of Parks and Recreation for expenditure when appropriated by the Legislature for the purposes of Section 5090.64 of the Public Resources Code.

(d) On or before January 1, 2005, the Division of Off-Highway Motor Vehicle Recreation in the Department of Parks and Recreation shall submit a report to the Legislature that identifies the appropriate level of funding necessary to sustain conservation and enforcement needs, grant areas, state vehicular recreation areas, capital outlay, and division support, based upon an analysis of program income and expenditures during the preceding five fiscal years and the findings contained in the most recent fuel tax study.

History.—Added by Stats. 1986, Ch. 1009, effective January 1, 1987. Stats. 1987, Ch. 1027, effective January 1, 1988, in subdivision (a), changed “as a subaccount in the Motor Vehicle Fuel Account” to “as an account in the Off-Highway Vehicle Fund”, deleted “the provisions of” before “Sections 8352 and 8352.1”, deleted comma after “every month”, deleted “an” and substituted “33 percent of the total” after “Account” and before “amount”, changed “estimate” to “estimates” and “report” to “reports” in second sentence, and added “Sections 8352.6, 8352.7 and” before “this section.” Stats. 2002, Ch. 563 (AB 2274), effective January 1, 2003, added “trust” after “Off-Highway Vehicle”, deleted “33 percent of” after “Enforcement Services Account” and deleted “the most recent reports prepared pursuant to Sections 8352.6, 8352.7, and” after “estimates contained in” in subdivision (a); completed revised subdivision (d). Stats. 2004, Ch. 908 (AB 2666), in effect January 1, 2005, substituted “findings” for “fundings” after “five fiscal years and the” in subdivision (d).

8352.9. Withhold of report preparation costs. The Controller shall withhold from any funds transferred pursuant to any section of this chapter an amount equal to the cost, as determined by the Department of Transportation, to the State Highway Account for preparing any report needed in order to establish the appropriate amount of any such transfer. He shall transfer such amounts withheld to the State Highway Account in the State Transportation Fund.

History.—Added by Stats. 1974, Ch. 1134, effective January 1, 1975.

8353. Transfer to Highway Users Tax Fund. By the 28th day of each calendar month, the balance remaining to the credit of the Motor Vehicle Fuel Account at the close of business on the 23rd day of the same month, after payments of refunds and administration and enforcement, as provided for in Section 8352.1, shall, on order of the Controller, be transferred to the Highway Users Tax Account in the Transportation Tax Fund.

History.—Stats. 1947 (First Extra Session 1947), p. 3806, operative January 1, 1948, repealed the original section, relating to apportionments of the fund to counties, and added the present section. Stats. 1953, p. 3306, in effect November 1, 1953, revised language of section and substituted “each calendar month” for “the months of January, April, July and October of each year.” Stats. 1971, p. 2430, operative January 1, 1972, changed fund titles. Substituted “section 8352.1” for “section 8352”. Stats. 1972, Ch. 481, in effect March 7, 1973, deleted a paragraph governing transfers before commencement of state personal income tax withholding, deleted the words “Upon the commencement of the withholding of state personal income taxes,” at the beginning of the remaining paragraph, and substituted “12th” for “10th”. Stats. 1983, Ch. 323, in effect July 21, 1983, operative August 1, 1983, substituted “28th” for “12th” after “By the” and “23rd” for “seventh” after “on the”, and deleted “State” before “Controller”.

8359. Revolving fund. The board may, without at the time furnishing vouchers and itemized statements, draw from the Motor Vehicle Fuel Account a sum not to exceed five thousand dollars (\$5,000). The sum so drawn shall be used as a revolving fund where cash advances are necessary.

History.—Stats. 1987, Ch. 56, effective January 1, 1988, deleted “Fund” following “Motor Vehicle Fuel” and substituted “Account”.

8360. Expenses of court action. The board may pay out of the appropriations made to it from the Motor Vehicle Fuel Account all expenses

incurred in the prosecution before any court of this State of any person charged with the violation of this part.

History.—Stats 1987, Ch. 56, effective January 1, 1988, deleted “Fund” following “Motor Vehicle Fuel” and substituted “Account” and deleted “of any provision” following “with the violation”.

CHAPTER 11. VIOLATIONS *

- § 8401. Penalty for fraudulent export statement.
- § 8402. Penalties.
- § 8403. Unlicensed operations; penalty.
- § 8404. False or fraudulent return; intent to evade.
- § 8405. Additional misdemeanor and fine.
- § 8406. Limitation period.

8401. Penalty for fraudulent export statement. It is unlawful for any person, firm, association, or corporation, or any officer or agent thereof, through false statement, trick or device, or otherwise, to do any of the following:

(a) Obtain motor vehicle fuel for export and fail to export it, or cause it not to be exported.

(b) Divert motor vehicle fuel, or cause it to be diverted, from interstate or foreign transit begun in this state.

(c) Return motor vehicle fuel to this state and sell or use it, or cause it to be used or sold in this state, without complying with the provisions of this part and without notifying the supplier from whom the motor vehicle fuel was originally purchased of his or her act. It is unlawful for any supplier or other person to conspire with any person, firm, association, or corporation, or any officer or agent thereof, to withhold motor vehicle fuel from export, or to divert it from interstate or foreign transit begun in this state, or to return it to this state for sale or use so as to avoid any of the taxes imposed by this part.

Any person violating any provision of this section is guilty of a misdemeanor punishable as provided in Section 8402.

Each shipment illegally diverted or illegally returned constitutes a separate offense, and the unit of each shipment is the cargo of one vessel, or one railroad carload, or one automobile truck load, or such truck and trailer load, or one drum, or one barrel, or one case, or one can.

8402. Penalties. It is unlawful for any person, firm, association, or corporation, or any officer or agent thereof, to do any of the following:

(a) Fail to pay the tax.

(b) Fail, neglect, or refuse to make and file any statement required by this part in the manner or within the time required.

(c) Make any false statement or conceal any material fact in any record, report, affidavit, or claim provided for in this part.

(d) Violate any other provision of this part.

Any person violating any provision of this section is guilty of a misdemeanor, unless the act is by any other law of this state declared to be a felony, and upon conviction is punishable by a fine of not less than one

*Added by Stats. 2000, Ch. 1053 (AB 2114), operative January 1, 2002.

thousand dollars (\$1,000) nor more than five thousand dollars (\$5,000), or by imprisonment in the county jail not exceeding six months, or by both fine and imprisonment.

8403. Unlicensed operations; penalty. It is unlawful for any person, firm, association, or corporation, or any officer or agent thereof, to conduct any activities requiring a license under this part without a license or after a license has been surrendered, canceled, or revoked. Any violation of this section is subject to the same punishment as is prescribed in Section 8402.

8404. False or fraudulent return; intent to evade. (a) Any person required to make, render, sign, or verify any return or report who makes any false or fraudulent return or report with intent to defeat or evade the determination of an amount due required by law to be made is guilty of a misdemeanor punishable as provided in Section 8402. (b) Any person who willfully aids or assists in, or procures, counsels, or advises in the preparation or presentation under, or in connection with any matter arising under this part, of a return, report, affidavit, claim, or other document which is fraudulent or is false as to any material matter, whether or not the falsity or fraud is with knowledge or consent of the person authorized or required to present the return, report, affidavit, claim, or document is guilty of a misdemeanor punishable as provided in Section 8402.

8405. Additional misdemeanor and fine. (a) Notwithstanding any other provision of this part, any person who willfully evades or attempts in any manner to evade or defeat the payment of the tax imposed by this part is guilty of a misdemeanor punishable by a fine of not less than five thousand dollars (\$5,000) and not more than twenty thousand dollars (\$20,000), imprisonment, or both the fine and imprisonment in the discretion of the court. In addition to the fine or imprisonment, or both, each person convicted under this section shall pay up to two dollars (\$2) for each gallon of motor vehicle fuel, or portion thereof, knowingly removed, entered, blended, or possessed, kept, stored, or retained for the purpose of removal or removed, or offered for removal, or entry, or entered, or for sale, or actually sold, or offered for sale, in violation of this section, as determined by the court.

(b) Proceeds of the assessed penalty shall be distributed to the treasurer of the county in which the action was brought for allocation to the prosecuting agency in the amount necessary to reimburse the agency for its costs of prosecution, and to the county for its reasonable costs of administration of this paragraph. Any remaining proceeds shall be deposited in the Motor Vehicle Fuel Account in the Transportation Tax Fund, and shall be available, upon appropriation by the Legislature, to pay administrative costs of the board to enforce this part.

8406. Limitation period. Any prosecution for violation of any of the penal provisions of this part shall be instituted within three years after the commission of the offense, or within two years after the violation is discovered, whichever is later.

CHAPTER 12. METROPOLITAN TRANSPORTATION COMMISSION *

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- § 8502. Authority to levy tax.
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- § 8504. Authority to levy tax; voter approval.
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- § 8525. Authority to borrow funds.
- § 8526. Bonds qualify as trust fund investments.

8500. **Construction.** Except when the context otherwise requires, the definitions given in this chapter govern the construction of this chapter.

8501. **Definitions.** As used in this chapter, the following definitions have the following meanings:

(a) “Commission” means the Metropolitan Transportation Commission created by Title 7.1 (commencing with Section 66500) of the Government Code.

(b) “Region” means the region comprising the commission’s jurisdiction, prescribed by Section 66502 of the Government Code.

(c) “Bonds” means indebtedness and securities of any kind or class, including bonds, notes, bond anticipation notes, and commercial paper.

8502. **Authority to levy tax.** The commission may impose, in addition to any other tax authorized by this division, a tax on the privilege of selling within the region, motor vehicle fuel, as defined by Section 7326. The tax shall not apply to motor vehicle fuel used to power aircraft. The tax shall be levied at a rate established by the commission, but not exceeding ten cents (\$0.10) per gallon. Commencing on January 1 of the year following the election approving the tax, the tax may be imposed for a period not to exceed 20 years.

History.—Stats. 2000, Ch. 1053 (AB 2114), operative January 1, 2002, substituted “7326” for “7304” after “as defined by Section” in the first sentence.

* Added by Stats. 1997, Ch. 878 (AB 595), in effect January 1, 1998.

8503. Required expenditure plan. (a) Prior to imposing the tax, the commission shall adopt a regional transportation expenditure plan for the revenues derived from the tax. The regional transportation expenditure plan shall describe specific proposed transportation projects and the estimated cost of each project.

(b) The regional transportation expenditure plan shall also meet the following minimum objectives and criteria:

(1) Project expenditures shall reflect an equitable distribution of revenues throughout the region with not less than 95 percent of revenues from each county, based on population, being invested over the 20-year life of the tax in projects attributable to that county. In addition, during every five-year period, no less than 80 percent of the revenues from each county, based on population, invested during that period shall be invested in projects attributable to that county. The commission shall allocate any accrued interest according to the same formula. At the time of the development of the expenditure plan, the commission shall use population data from the most recent United States census, and shall take into account estimated increases in population over the 20-year period projected by the Association of Bay Area Governments.

(2) Projects included in the expenditure plan shall be consistent with the commission's regional transportation plan, a congestion management program, or a countywide transportation plan. The commission shall, in prioritizing projects in the expenditure plan, give additional consideration to projects where local land use policies reduce dependence on single-occupant motor vehicle travel. The expenditure plan development process shall include consultation with cities, counties, transit operators, congestion management agencies, and other interested groups.

(3) Cost estimates for each project shall be prepared by the commission, in consultation with project sponsors, and verified by an independent cost-estimating firm retained by the commission for that purpose. Estimates of other funding required to complete any project shall be based on an estimate of funds reasonably expected to be available during the 20-year period commencing with the year that the tax is initially imposed.

(4) To be eligible for inclusion in the expenditure plan, a project shall meet at least one of the following regional transportation needs:

(A) Fund maintenance and rehabilitation of local streets and roads, sidewalks, or bicycle routes, or close a gap in the local street and road system.

(B) Fund capital or operating expenses of public transit systems.

(C) Fund transit expansion projects in the commission's Resolution 3434, Regional Transit Expansion Program as contained in the commission's regional transportation plan.

(D) Provide an alternative to single occupancy automobile travel.

(E) Improve safety on specific roadway segments where accident or fatality rates exceed the expected rate for those segments over a multiyear timeframe, including, but not limited to, expansion or realignment of the roadway.

(F) Improve the operational efficiency of the existing roadway system without a physical expansion of the system. However, expansion projects to reconfigure existing interchanges are eligible for inclusion in the plan.

(G) Fund implementation of the requirements of the federal Americans with Disabilities Act of 1990 (P.L. 101-336), or those requirements as revised, on public transit systems and other transportation-related facilities.

(H) Fund seismic retrofitting of transportation facilities.

(I) Fund intermodal freight or passenger facilities.

(J) Fund transportation enhancement activities, including projects consistent with the commission's Transportation for Livable Communities (TLC) Program and the Housing Incentive Program (HIP).

(K) Defray interest costs and other expenses associated with the issuance of revenue bonds or revenue anticipation notes.

(5) If not otherwise available, sufficient funding shall be included in the cost estimates and expenditure plan presented to the voters to operate and maintain each included project for the duration of the tax.

History.—Stats. 1999, Ch. 724 (AB 1650), in effect January 1, 2000, substituted "facilities," for "facilities, except toll bridges," in subparagraph (H) of paragraph (4) of subdivision (b). Stats. 2002, Ch. 161 (AB 2181), substituted "transit expansion projects . . . Transit Expansion Program" after "Fund" in paragraph (4)(C) of, and substituted "including products consistent . . . Incentive Program (HIP)" for "as defined in . . . United States Code" after "enhancement activities," in paragraph (4)(J) of, subdivision (b).

8504. Authority to levy tax; voter approval. (a) Following the adoption by the commission of a regional transportation expenditure plan, the board of supervisors of each county and city and county in the region shall, upon the request of the commission, submit to the voters at a local election consolidated with a statewide primary or general election specified by the commission, a measure, adopted by the commission, authorizing the commission to impose the tax throughout the region.

(b) The measure may not be grouped with state or local measures on the ballot, but shall be set forth in a separate category and shall be identified as Regional Measure 2.

(c) Regardless of the system of voting used, the wording of the measure shall read as follows:

"Shall The Metropolitan Transportation Commission be authorized to impose a tax of ____ per gallon on the sale of gasoline to build and operate transportation projects identified in the expenditure plan adopted by the commission?"

(d) The commission shall reimburse each county and city and county in the region for the cost of submitting the measure to the voters. These costs shall be reimbursed from revenues derived from the tax if the measure is approved by the voters or, if the measure is not approved, from any funds of the commission that are available for general transportation planning.

(e) The board of supervisors of a county or city and county may elect not to submit the measure adopted by the commission to the voters if it submits an alternative countywide transportation funding measure to the voters at the same election.

History.—Stats. 1999, Ch. 724 (AB 1650), in effect January 1, 2000, renumbered first sentence of the first paragraph as subdivision (a), renumbered second and third sentences of the first paragraph as subdivision (d), substituted “or, if the measure . . . general transportation planning.” for “and from any available fund of the commission if the measure is not approved.” in subdivision (d), renumbered fourth sentence of the first paragraph as subdivision (e), and added subdivision (b) and (c).

8505. Participating counties. Upon approval of the measure by the margin of voters within the region voting at a local election as determined necessary by the California Constitution or other applicable statutory provisions, the commission may impose the tax in all counties in the region in which the measure appeared on the ballot.

8506. Contract to administer. The commission shall contract with the State Board of Equalization for the administration of any tax imposed under this chapter, and the board shall be reimbursed for its actual cost in the administration of the tax and for its actual cost of preparation to administer the tax based upon an independent audit.

8507. Rules and regulations. The State Board of Equalization shall adopt the necessary rules and regulations to administer the tax.

8508. Transmittal of revenue. After deducting its cost of administering the tax, the State Board of Equalization shall periodically transmit the net revenues to the commission as promptly as possible. Transmittal of those revenues shall be made at least twice in each calendar quarter.

8509. Disposition of revenue. The net revenues received by the commission shall be expended only in accordance with the regional transportation expenditure plan adopted pursuant to Section 8503, except that the commission may deduct from those revenues funds to reimburse it for expenses incurred in the initial implementation of this chapter, and thereafter, its cost of administration, not to exceed 1 percent of annual net revenues.

8510. Compliance by project sponsors. In order to be eligible for funds derived from the tax, project sponsors shall comply with all applicable commission rules and regulations including, but not limited to, those adopted pursuant to Section 66516 of the Government Code and Sections 99244 and 99246 of the Public Utilities Code. In consultation with cities, counties, transit operators, congestion management agencies, and other interested groups, the commission shall also develop and implement a program to ensure that project sponsors expend funds derived from the tax in an efficient and effective manner. No operating or maintenance funding provided from the tax shall be used to supplant any funds within the discretionary control of the recipient agency that are used for existing transportation operating or maintenance activities.

8511. Periodic review of plan. The commission's regional transportation expenditure plan shall include a process of ensuring periodic public review of the progress of the regional transportation expenditure plan and citizen oversight.

8512. Amending of expenditure plan. The commission may, by a two-thirds vote, amend the regional transportation expenditure plan after a minimum of two public hearings in accordance with Section 8511. Any amendment shall comply with all of the requirements for the plan prescribed by this chapter.

8513. Issuance of bonds. (a) If requested to do so by the commission in its resolution calling for an election, the board of supervisors, as part of the ballot proposition to approve the imposition of the tax, shall include authorization for the commission to issue bonds for capital outlay expenditures as may be provided for in the ordinance expenditure plan payable from the proceeds of the tax.

(b) The maximum bonded indebtedness that may be outstanding at any one time shall be an amount equal to the sum of the principal of, and interest on, the bonds, but not to exceed the estimated proceeds of the tax, as determined by the plan. The amount of bonds outstanding at any one time does not include the amount of bonds, refunding bonds, or bond anticipation notes for which funds necessary for the payment thereof have been set aside for that purpose in a trust or escrow account.

(c) The proposition shall set forth each of the following:

(1) The actual percent of the tax.

(2) The duration of the tax if the plan specifies a time limit.

(3) The amount of bonds, if any, payable from the proceeds of the tax.

(4) The commission as the agency imposing the tax.

(5) The appropriations limit of the commission, pursuant to Section 4 of Article XIII B of the California Constitution.

(d) The sample ballot to be mailed to the voters, pursuant to Section 13303 of the Elections Code, shall be the full proposition, as set forth in the ordinance calling the election, and the voter information handbook shall include the entire ordinance expenditure plan.

8514. Payment of bonds. (a) The bonds authorized by the voters concurrently with the approval of the tax may be issued at any time by the commission and shall be payable from the proceeds of the tax. The bonds shall be referred to as "limited tax bonds."

The bonds may be secured by a pledge of revenues from the proceeds of the tax.

(b) The pledge of the tax to the limited tax bonds authorized under this chapter shall have priority over the use of any of the tax for "pay-as-you-go" financing, except to the extent that this priority is expressly restricted in the resolution authorizing the issuance of the bonds.

8515. Limited tax bonds. Limited tax bonds shall be issued pursuant to a resolution adopted at any time by a two-thirds vote of the commission. Each resolution shall provide for the issuance of bonds in the amounts as may be necessary, until the full amount of bonds authorized have been issued. The full amount of bonds may be divided into two or more series and different dates of payment fixed for the bonds of each series. A bond need not mature on its anniversary date.

8516. Required elements of bond resolution. (a) A resolution authorizing the issuance of bonds shall state all of the following:

(1) The purposes for which the proposed debt is to be incurred, which may include all costs and estimated costs incidental to, or connected with, the accomplishment of those purposes, including, without limitation, engineering, inspection, legal, fiscal agent, financial consultant and other fees, bond and other reserve funds, working capital, bond interest estimated to accrue during the construction period and for a period not to exceed three years thereafter, and expenses of all proceedings for the authorization, issuance, and sale of the bonds.

(2) The estimated cost of accomplishing those purposes.

(3) The amount of the principal of the indebtedness.

(4) The maximum term the bonds proposed to be issued shall run before maturity, which shall not be beyond the date of termination of the imposition of the tax.

(5) The maximum rate of interest to be paid, which shall not exceed the maximum allowable by law.

(6) The denomination or denominations of the bonds, which shall not be less than five thousand dollars (\$5,000).

(7) The form of the bonds, including, without limitation, registered bonds and coupon bonds, to the extent permitted by federal law, and the form of any coupons to be attached thereto, the registration, conversion, and exchange privileges, if any, pertaining thereto, and the time when all of, or any part of, the principal becomes due and payable.

(b) The resolution may also contain any other matters authorized by this chapter or any other law.

8517. Rate of bond interest. The bonds shall bear interest at a rate or rates not exceeding the maximum allowable by law, payable at intervals determined by the commission, except that the first interest payable on the bonds, or any series thereof, may be for any period not exceeding one year, as determined by the commission.

8518. Redemption of bonds prior to maturity. In the resolution authorizing the issuance of the bonds, the commission may also provide for the call and redemption of the bonds prior to maturity at the times and prices and upon other terms as specified. However, no bond is subject to call or redemption prior to maturity, unless it contains a recital to that effect or unless a statement to that effect is printed.

8519. Payment of principle and interest. The principal of, and interest on, the bonds shall be payable in lawful money of the United States at the office of the treasurer of the commission, or at other places as may be designated, or at both the office and other places at the option of the holders of the bonds.

8520. Required elements of bonds. The bonds, or each series thereof, shall be dated and numbered consecutively and shall be signed by the chairperson or vicechairperson of the commission and the auditor-controller of the commission, and the official seal, if any, of the commission shall be attached.

The interest coupons of the bonds shall be signed by the auditor-controller of the commission. All of the signatures and seal may be printed, lithographed, or mechanically reproduced.

If any officer whose signature appears on the bonds or coupons ceases to be that officer before the delivery of the bonds, the officer's signature is as effective as if the officer had remained in office.

8521. Sales of bonds. The bonds may be sold as the commission determines by resolution, and the bonds may be sold at a price below par, whether by negotiated or public sale.

8522. Delivery and payment for bonds. Delivery of any bonds may be made at any place either inside or outside the state, and the purchase price may be received in cash or bank credits.

8523. Disposition of bond proceeds. All accrued interest and premiums received on the sale of the bonds shall be placed in the fund to be used for the payment of the principal of, and interest on, the bonds, and the remainder of the proceeds of the bonds shall be placed in the treasury of the commission and applied to secure the bonds or for the purposes for which the debt was incurred. However, when the purposes have been accomplished, any money remaining shall be either (a) transferred to the fund to be used for the payment of principal of, and interest on, the bonds or (b) placed in a fund to be used for the purchase of the outstanding bonds in the open market at prices and in the manner, either at public or private sale or otherwise, as determined by the commission. Bonds so purchased shall be canceled immediately.

8524. Retirement of bonds. (a) The commission may provide for the issuance, sale, or exchange of refunding bonds to redeem or retire any bonds issued by the commission upon the terms, at the times, and in the manner which it determines.

(b) Refunding bonds may be issued in a principal amount sufficient to pay all, or any part of, the principal of the outstanding bonds, the premiums, if any, due upon call and redemption thereof prior to maturity, all expenses of the refunding, and either of the following:

(1) The interest upon the refunding bonds from the date of sale thereof to the date of payment of the bonds to be refunded out of the proceeds of the

sale of the refunding bonds or to the date upon which the bonds to be refunded will be paid pursuant to call or agreement with the holders of the bonds.

(2) The interest upon the bonds to be refunded from the date of sale of the refunding bonds to the date of payment of the bonds to be refunded or to the date upon which the bonds to be refunded will be paid pursuant to call or agreement with the holder of the bonds.

(c) The provisions of this chapter for the issuance and sale of bonds apply to the issuance and sale of refunding bonds.

8525. Authority to borrow funds. (a) The commission may borrow money in anticipation of the sale of bonds which have been authorized pursuant to this chapter, but which have not been sold or delivered, and may issue negotiable bond anticipation notes therefor and may renew the bond anticipation notes from time to time. However, the maximum maturity of any bond anticipation notes, including the renewals thereof, shall not exceed five years from the date of delivery of the original bond anticipation notes.

(b) The bond anticipation notes, and the interest thereon, may be paid from any money of the commission available therefor, including the revenues from the tax. If not previously otherwise paid, the bond anticipation notes, or any portion thereof, or the interest thereon, shall be paid from the proceeds of the next sale of the bonds of the commission in anticipation of which the notes were issued.

(c) The bond anticipation notes shall not be issued in any amount in excess of the aggregate amount of the bonds which the commission has been authorized to issue, less the amount of any bonds of the authorized issue previously sold, and also less the amount of other bond anticipation notes therefor issued and then outstanding. The bond anticipation notes shall be issued and sold in the same manner as the bonds.

(d) The bond anticipation notes and the resolutions authorizing them may contain any provisions, conditions, or limitations which a resolution of the commission may contain.

8526. Bonds qualify as trust fund investments. Any bonds issued under this chapter are legal investment for all trust funds; for the funds of insurance companies, commercial and savings banks, and trust companies; and for state school funds; and whenever any money or funds may, by any law now or hereafter enacted, be invested in bonds of cities, counties, school districts, or other districts within the state, that money or those funds may be invested in the bonds issued under this chapter, and whenever bonds of cities, counties, school districts, or other districts within the state may, by any law now or hereafter enacted, be used as security for the performance of any act or the deposit of any public money, the bonds issued under this chapter may be so used. The provisions of this chapter are in addition to all other laws relating to legal investments and shall be controlling as the latest expression of the Legislature with respect thereto.

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MOTOR VEHICLE FUEL TAX LAW

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